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MEMORIAL

OF

JOHN ROSS AND OTHERS,

Representatives of the Cherokee nation of Indians, on the subject of the existing difficulties in that nation, and their relations with the United States.

MAY 4, 1846.

Referred to the Committee on Indian Affairs, and ordered to be printed.

To the honorable Senate and House of Representatives of the Congress of the United States:

The undersigned, delegates duly appointed by the government of the Cherokee nation, beg leave respectfully to approach your honorable bodies upon a subject which they believe involves the very existence of their country and people. They have read with equal grief and astonishment the message of the President of the United States and the accompanying documents, which have recently been communicated to Congress, touching the relation between the United States and the Cherokee nation; and, whilst they have the most entire confidence in the pure motives and benevolent purposes which have influenced the President, they beg leave most respectfully to express the belief that his opinions have been formed without that full knowledge of all the facts in the case which they have an abiding confidence would have produced a different result.

This may have resulted from the many and more important calls upon his time and attention; and it may be that important documents have been withheld from the President as they have been from your honorable bodies. Whilst the undersigned disclaim the most remote suspicion of any unworthy influence or improper motives on the part of the Commissioner of Indian Affairs, they take leave to say that the report of that officer, which accompanies the President's message, is a most extraordinary official paper—extraordinary for the tone and spirit which pervade it, for the positions which are assumed, and for the absence of all the documents in the archives of his office which were in any degree favorable to the undersigned, as representing the constituted authorities of the Cherokee nation. The style of the report is much more that of an excited partisan and advocate than of an impartial judge. The undersigned have felt it their duty to allude to this as, in a great degree, diminishing the weight of authority to which the opinions of the Commissioner of Indian Affairs would have been entitled if those opinions had been formed less under the influence of prejudice, and expressed in language more usual in official

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documents—more temperate and impartial. It is worthy of remark, that whilst among the papers accompanying this report are to be found every form of vituperation and calumny against the constituted authorities of the Cherokee nation, and emanating from an equal variety of sources, from a general in the army of the United States down to the *ex parte* and unauthoritative statements of the most abandoned persons, not a single paper exculpatory of those thus assailed has been communicated to Congress, nor one word even in extenuation of their conduct. Your honorable bodies will doubtless suppose that there was in fact no such evidence. If there was, it was due alike to the Cherokee authorities, to the Cherokee people whose destiny is involved in the issues now presented, to the cause of truth and justice, and, the undersigned would respectfully add, to the dignity of your honorable bodies, that such evidence should have accompanied the report.

The action of Congress is asked, as a co-ordinate branch of the government, upon questions involving the very existence of a faithful, once powerful, but now feeble, and already much injured people. This necessarily implies that all the evidence should be furnished that might enable Congress to act understandingly upon these grave questions. It could hardly have been supposed that this action would have been taken solely on the authority of the opinion of the President, formed, as that opinion must necessarily be, upon facts and details furnished by one of his subordinate officers, however respectable. Entertaining these views, the undersigned do not doubt that your honorable bodies will not be a little surprised at what they are about to state. These complaints (not on the part of the western Cherokees as a body, but a minority of those Cherokees, and, the undersigned are constrained to add, the least respectable portion) are by no means now made for the first time. As to the true origin of these complaints, and the causes of their continuance, the undersigned will hereafter speak. Two years ago, these complaints were so importunately urged upon the then President of the United States, and then, as now, supported by *ex parte* affidavits, that the President, Mr. Tyler, wisely determined to adopt measures to ascertain, in the most authoritative form, the truth or falsehood of all the charges which had been made against the authorities of the Cherokee nation; and, to that end, constituted a commission of three gentlemen of high character.

These commissioners were directed to proceed to the Cherokee country, and, after full notice, to assemble the Indians of all parties, hear their complaints, receive the evidence which they might adduce, and to report the same to the Executive of the United States. The commissioners, thus appointed, assembled at Taluntusky, near Fort Gibson, on the 4th of December, 1844: two hundred and eighty-six Indians of the old settler party, and one hundred and ninety nine of the treaty party, were in attendance. The commissioners afterwards adjourned to the Cherokee agency, and thence to Fort Gibson. The commissioners in their report say: "At these several places and meetings, the Indians had the fairest opportunity afforded them to come in and make known their complaints, if any they had, in any way they might choose. They chose to do this by deputation; and, accordingly, they appointed committees of twenty-four to represent the complaining parties. The commissioners mingled freely with the people everywhere, conversed with many, inquired of individuals of every party, and on all occasions sought information from all accessible sources in order, if possible, to fetch out the truth and the real state of facts alleged or contradicted by the opposing parties. Twelve days were allowed to collect the people at the different places designated, after the time appointed for the meeting, (4th December,) for which ample notice had been published and spread through the nation. The whole number was 908, of which 546 are old settlers, and three hundred and sixty-two of the treaty party. It was remarked that many were half-breeds, and who could not be distinguished from white men; and it was subsequently ascertained that 155 were not Indians. *Most of the individual complainants appear to be of this class.* The collected mass do not indicate the number of individuals present who had come to complain of wrongs and oppressions by the dominant party. Of this class, the proportion is small compared to the mass, whose main purposes, doubtless, were to look after moneys claimed of the United States for the partition of their country in joint occupancy with the eastern Cherokees, &c., &c. It was told to the old settlers that, 'if as many as 400 warriors could be enrolled, their country would be divided, and they would get money from the United States for the part assigned the eastern Cherokees.'"

After a patient and laborious investigation of all the charges, and examination of the witnesses produced, the commissioners not only fully and entirely exculpate the authorities of the Cherokee nation, but bear the strongest testimony to the justice and wisdom of their conduct; and what, in the opinion of the undersigned, is of much more consequence, they attribute all the dissensions and difficulties in the country to a portion of the western Cherokees, and the treaty party whom they properly designate as "a desperate gang of banditti, (half breeds,) notorious in the nation as wanton murderers, house burners, and horse-stealers." The undersigned would call special attention to the characters of the gentlemen who constituted this commission. The first was Roger Jones, Adjutant General of the Army of the United States, and who, the undersigned have authority for saying, went to the Cherokee country with the strongest prejudices against the authorities of the nation, and particularly the principal chief; although the undersigned were aware of this, they were not dissatisfied with the appointment, for they had full confidence in his intelligence, virtue, and honorable character. The second was Lieutenant Colonel Richard B. Mason, who, having had some collisions and controversies with the Cherokee authorities, could not have been suspected of any special partiality towards them. The third was Governor Pierce M. Butler, who had been for some time the Cherokee agent, and who enjoyed the entire confidence not only of his own government, but also of each of the three parties into which the nation was unhappily divided, and whose position gave him advantages of knowing the true state of facts which were not enjoyed by any other person. The undersigned had hoped that the Commissioner of Indian Affairs would have hesitated long in coming to conclusions on all and each of the points in controversy directly in opposition to the opinions of gentlemen so respectable, and enjoying so many means of information which he could not himself command. They cannot but express their astonishment that the Commissioner should have adopted this course upon no other evidence than ex parte affidavits, and information from unknown and irresponsible witnesses—a kind of testimony which, in another part of his report, where it is relied on to establish facts favorable to the constituted authorities of the nation, he rejects as entitled to little consideration. But the surprise of the undersigned was still more increased at finding that this important document, which establishes the groundlessness of all the charges, and the falsehood of the same character of testimony in support of them as that subsequently adduced, is not only not sent with his report, but that no reference whatever is made to it. The Commissioner could find ample room, in his report, for the calumnious imputations and indecent scurrilities of the feed attorneys of the "western Cherokees" and "treaty party," but none for the authoritative refutation of all these calumnies by honorable and disinterested men. The undersigned, in a full reliance upon the sense of honorable justice of the American Congress, and in the force of truth, flatter themselves that your honorable bodies will place a different estimate upon the report of this commission, and that you will regard it as not only entitled to some consideration, but even to more than that which is due to the opinion of the Commissioner of Indian Affairs, or to any amount of ex parte evidence, and that it will be regarded as concluding all the questions of fact embraced in it. The undersigned feel it to be their duty to refer to another fact as illustrative of the spirit in which this matter has been conducted. When they were informed that certain complaints had been made by a portion of the Cherokee nation, they requested copies of these complaints, or even that they might be informed of their nature. This was refused them. The application was again made by their counsel, a gentleman of the highest standing and respectability. This was again refused. This gentleman was told that an argument would be received from him on the part of the undersigned; to which the obvious reply was made that no such argument could by possibility be drawn up, without a knowledge of the charges and complaints which had been made. The undersigned have deemed it proper to make these preliminary remarks before proceeding, as they now do, to discuss the measures recommended by the President and the Commissioner of Indian Affairs. These are, first, the division of the territory between the western Cherokees and the treaty party and the eastern Cherokees, or late emigrants, and the extension of the criminal laws of the United States over the Cherokee nation. The Commissioner of Indian Affairs goes still further, and recommends that "where property of one party shall be injured, taken, or destroyed, by persons of the other party, and the former (and other) party fails to make reparation therefor, the Executive be authorized to withhold, from any moneys payable to the party to which the aggressors shall belong, a sufficient sum for the purpose of compensating the person or persons injured." As this last recommendation has not received the sanction of the President's approbation, the undersigned will only say of it, that its effect would obviously be to transfer the jurisdiction, in all cases of civil trespass, from the tribunals of the country to the President of the United States, who would necessarily be compelled to decide such cases upon written testimony only, without any knowledge of the character of the witnesses, the circumstances under which the testimony was taken, and all those advantages of viva voce testimony, which are the great security in trials of questions of fact, and the invariable adjunct of jury trials, with a few special exceptions, made by statute and dictated by necessity. They will add that it is so openly in violation of treaty stipulations, and of every principle of justice and right, that they have noticed it merely as exhibiting the excited state of feeling in which the Commissioner of Indian Affairs has treated this whole subject, and the inconsiderateness with which propositions, so flagrantly unjust and unauthorized, are submitted by him. The undersigned beg leave to say, that, notwithstanding the claim of right of eminent domain, which has been made by the government of the United States to Indian territory, the Indian nations have always been treated as separate sovereignties. Treaties have been made with them with all the forms which are observed between independent sovereignties. Those treaties are submitted to the Senate for ratification with all the forms and solemnities, and are afterwards published in the same manner as treaties with foreign nations.

The right to limit their trade to citizens of the United States;

To prohibit their making treaties with foreign nations or the States of the Union;

To sell their lands to individuals or States without the consent of Congress;

The right to travel through their country, to navigate their rivers, or hunt upon their lands;

To cut a road or carry the mail through the Indian country. None of these rights have ever been claimed or asserted, unless in cases where they have been given by treaty. They have always been their own legislators; and have, without interference, made such laws as they considered best suited to the peculiar circumstances of their country and people. Even the right to try and punish Indians for criminal offences committed against citizens of the United States has no other basis, so far as the Cherokee nation is concerned, than that of treaty stipulation.

The tenth article of the treaty of Holston, in 1791, which has been confirmed and renewed from that time to the treaty of 1835, is as follows: "If any Cherokee Indian or Indians, or persons residing among them, or who shall take refuge in their nation, shall steal a horse, or commit a robbery or murder, or other *capital* crime, on any *citizen or inhabitant of the United States*, the Cherokee nation shall be bound to deliver him or them to be punished according to the laws of the United States." So clear has been the conviction that there was no power to punish for offences committed in the Indian country, which was not granted by treaty, and so scrupulously has this provision of the treaty of Holston been adhered to by the government of the United States, that the act of Congress of the third of March, 1817, for the punishment of offences against citizens of the United States, committed in the Indian country, does not apply to offences *not capital*, for there is one proviso which expressly excepts Indian tribes between whom and the United States there are treaty stipulations in conflict with that act; thus more clearly than any words could have done it, expressing the opinion that the government possessed no power in the premises but such as had been conceded by treaty. The right to divide the territory of an Indian tribe without their consent, of necessary consequence involves the right to seize that territory for any other purpose, to give it to any other tribe, or for the government of the United States to appropriate it to their own country. If the right exists, the only tenure by which any Indian nation holds their country, is the discretion or caprice of the government of the United States for the time being—a tenure worse than precarious, when it is liable to be divested upon the ex parte statements of "desperate banditti, murderers, and house-burners," and whose statements have been repeatedly proven to be false, and by the high authority of officers and commissioners appointed by the President himself for the special purpose of examining into the truth of the charges, and with facilities for doing so which no others possess.

So, also, if the laws of the United States may be extended over the Indian country in specified cases, why may it not be done in all cases? And surely, if the United States may enact laws, they have the right to administer and execute them, appoint the judges and all other officers. What is the limitation of this power, but the unrestricted discretion of the American government upon any given case arising upon any supposed necessity? Will any one say that any such general power exists, or has ever been claimed? If so, why was the clause inserted in the treaty of Holston in *specified cases?* Why also, in the act of 1817, are the lines limiting that power to specified cases by the treaty of Holston scrupulously respected? It was worse than superfluous to take a concession of a very limited portion of this power, when the whole power belonged of right to the government of the United States. The undersigned beg leave to call your attention to a fact which strikingly illustrates both the jealousy of the Cherokee people of the exercise of any such power, and the settled opinion on the part of the government of the United States that treaty concession was the only rightful authority for claiming it.

By the treaty of 1828, with the Cherokees, the United States stipulated "to supply them with a plain code of laws when they should request it." Apprehensive that this clause might at some future day be used as a pretext for forcing such a code of laws upon them, they insisted in the treaty of 1833 that this clause should be rescinded, and it was done, and stated in the treaty as having been done at their request. The same may be said of the other measure proposed—the partition of the Cherokee territory. The sixth article of the treaty of 1828, above referred to, is in the following words: "It is moreover agreed by the United States, whenever the Cherokees may desire it, to give them a plain code of laws suited to their condition, and also when they may wish to lay off their lands and own them individually, a surveyor shall be sent to survey them at the expense of the United States." The treaty of 1833, in its third article, recites, "That the Cherokees having *particularly* requested to annul and cancel the sixth article of the treaty of the sixth of May, 1828, the United States agree to cancel the same, and it is hereby cancelled." It thus appears that so cautious were the Cherokees as to both these points, that they were unwilling to give the slightest pretext for the exercise of the power either to prescribe the laws or to divide the territory of the country; and that on this account, and for this reason alone, they relinquished the advantage of having their lands surveyed at the expense of the United States, when they should themselves desire it. It demonstrates with equal force that the federal government did not consider that it possessed any right to partition the country of the Cherokees but by their consent. If the right exists to partition the country between different bands or parties, the same right exists to make such partition amongst individuals.

It will scarcely be contended that this was a treaty with the western Cherokees, and that the eastern Cherokees cannot avail themselves of its provisions. The treaty recites that it is made in contemplation of the removal of all the eastern Cherokees, and its provisions are all expressly extended to such as may remove. They were concessions made to the aggregate Cherokee nation thus formed, and if it had not been so, the eastern Cherokees, after their removal to the west, became incorporated with their brethren, and were subrogated to all the concessions of every sort which were at any time made to them.

No such right has heretofore been claimed, or its exercise attempted with any other Indian tribe!

Why not? Why is it that the single exception should be made in the case of the Cherokees? They had flattered themselves that they had more nearly approached than any other Indian tribe the civilization, laws, and customs of their white neighbors; and it is in no spirit of vain boasting, but the present perilous condition of their country and people they hope will excuse them for saying, that the history of man furnishes no parallel instance of advances in civilization, in laws, morals, religion, and general intelligence, to that which the history of the Cherokee nation for the last thirty years exhibits. Is there nothing in the laws and practices of other Indian tribes which requires correction? Is it only in the Cherokee country where assassinations are committed? The law of retaliation still exists in full force in nearly all the Indian tribes. Why is not the authority of the government used to suppress it? Is it from an excessive affection for the Cherokee people, and a desire to preserve their lives, that this partial kindness is shown them? If it were true, as has been falsely asserted, that Ridge and Boudinot were killed by the orders of the constituted authorities of the nation, their lives were forfeited under an existing law of the nation; and what is more, a law voted for and carried through by Ridge himself, and under the authority of which he himself killed the celebrated chief Double Head. That his life was forfeited for an act advantageous to the United States, might have entitled him to the more sympathy, but did not in any degree affect the question of power to prevent or punish it.

It then seems that the Cherokees are the single exception which has ever been attempted to be made to the conceded right of Indian tribes to be their own legislators and the sole judges of offences affecting themselves only. The undersigned will now proceed to show that, if the right in question exists as to other tribes, it does not as to the Cherokee people; but that, on the contrary, the Cherokee nation is precisely that one of all the Indian tribes as to which the government of the United States is most expressly restrained from the exercise of such a power, if there be any certainty in language, or anything sacred in the obligations of treaties. The first paragraph in the preamble to the treaty of 1835 is in the following words:

"Whereas the Cherokees are anxious to make some arrangement with the government of the United States, whereby the difficulties they have experienced by a residence within the settled parts of the United States, under the jurisdiction and laws of the State governments, may be terminated and adjusted, and with a view to reuniting their people in one body, and securing a permanent home for themselves and their posterity in the country selected by their forefathers, *without the territorial limits of the State sovereignties, and where they can establish and enjoy a government of their choice, and perpetuate such a state of society as may be most consonant with their views, habits, and conditions, and as may tend to their individual comfort* and their advancement in civilization. Article 5th. The United States hereby covenant and agree that the lands ceded to the

Cherokee nation in the foregoing article shall, in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory; but they shall secure to the Cherokee nation the right, by their *national council, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country* and belonging to their people, or such persons as may have connected themselves with them: *Provided, always*, That they shall not be inconsistent with the constitution of the United States, and such acts of Congress as have been or may be passed regulating *trade and intercourse* with the Indians; and, also, that they shall not be considered as extending to such citizens of the United States as may travel or reside in the Indian country by permission, according to the laws and regulations established by the government of the same."

Will any member of your honorable bodies be pleased to suggest any other words or forms of expression which would have more effectually secured to the Cherokee people the right of self-government, in all its forms, or have more effectually restrained the government of the United States from any participation in that power, or any interference in the domestic concerns of the Cherokee people? If the right were now again acknowledged by the government of the United States, and the undersigned were permitted to draw a clause more clearly defining and guarantying that right, they could think of no words more clear and explicit than those employed in the treaty of 1835. The President claims the right to extend the criminal laws of the United States over the Cherokee nation under the proviso to the 5th article of the treaty of 1835, which is above copied, to pass "laws regulating trade and intercourse with the Indians."

The undersigned respectfully submit that such a construction would be a palpable perversion of the words of that proviso, and of its obvious meaning, and in no degree greater than it would be to claim a similar right of criminal jurisdiction within any of the States of the Union under the grant in the constitution "to regulate commerce between the States and with foreign countries." The words are not precisely the same, but they are of precisely the same import, and were intended to secure the same objects. Such must be their interpretation if construed according to their common meaning and acceptation; and still more conclusively so if reference be made to the various legislatures, and other acts of the government, to regulate trade and intercourse. This proviso was intended to prescribe the terms of, and to provide all the necessary guarantees for, the citizens of the United States carrying on commerce or having other intercourse with the Cherokee people. Let any of the laws upon this subject, either with reference to the Cherokees or any other Indian nation, be referred to, and it will appear too clearly to be disputed that this and nothing else was the object of the proviso, and that the government of the United States has never understood it otherwise, or pretended to set up any claim to any other power under that and similar provisions, much less the monstrous pretension to the right to prescribe the criminal laws of the country—the most essential attribute of sovereignty, and without which the Cherokee nation would cease to have any one of the prerogatives of a government of their own. If this may be done, surely all the residue of less important powers may be in the same manner arrogated: the right to prescribe all the laws, and to appoint judges to administer, and officers to execute them. Of what avail, then, will be the privilege so solemnly guarantied and so formally recited as the primary inducement to the treaty of 1835?—of being removed beyond the jurisdiction of the laws of the United States, and that they may "enjoy a government of their own choice, and a state of society consonant with their views, habits, and condition." In the 5th article of the treaty it is provided, "that the Cherokee nation shall have the right, by their council, to make and carry into effect all such laws as they may deem necessary for the protection of the persons and property within their country." Can it be pretended that it was meant by the proviso to this clause to abrogate entirely all the privileges secured by it, or that such was the intention or understanding of either of the contracting parties?

The Commissioner of Indian Affairs places the power upon other grounds, which, in the opinion of the undersigned, are equally untenable. The 6th article of the treaty of 1835 contains the following words: "The United States agree to protect the Cherokee nation from domestic strife and foreign enemies, and against intestine wars between the several tribes." A similar clause will be found in the constitution of the United States—that to suppress insurrection, civil wars, &c. But it is only upon the application of the constituted authorities of a State that such a power can be called into exercise. It cannot be pretended that such interposition can be made by the federal government upon the application of an individual citizen, or any number of the citizens of a State, complaining that the laws of the State are oppressive, or that they are oppressively administered and executed; such an interpretation would annihilate the State sovereignties, and would inevitably excite the domestic strife it pretended to suppress. If the government of the United States has any right to interpose in such a case as that which is falsely stated to exist in the Cherokee country, there is an obvious limitation in the means which are to be used, and that limitation is expressly reserved to the Cherokee nation by treaty. The grant in the constitution of the United States of powers necessary and proper to the execution of granted powers, although giving a great latitude in the selection of means to that end, has never been construed by any one to extend to the exercise of powers expressly reserved to the States or to the people, or forbidden to Congress. If, for example, the passage of an *ex post facto* law, or a law impugning the obligation of contracts, or a bill of attainder, were clearly necessary and proper for the execution of a granted power, no one will pretend that Congress possesses the power to pass such a law. And why not? Why, because these powers are expressly prohibited. The States have reserved the right to enact their own criminal laws and to appoint their own judges. Suppose a case of insurrection or civil war should occur in any State, and which was clearly attributable to tyrannical laws and corrupt judges, and that there was no reasonable hope of quiet being restored until both were changed, would the government of the United States possess the power to change the laws, or remove the judges and appoint others? Suppose a case of servile insurrection, does the federal government possess the power of suppressing the evil by removing forever the cause by a general act of emancipation? If the cases are not parallel, the undersigned desire that the difference may be pointed out.

If, then, the federal government has any just power to interpose in the case stated, it is restrained from in any manner trenching upon the rights guarantied by treaties, and which existed prior to any treaties—rights which it has never before been questioned appertained to the Cherokees, in common with every other Indian tribe. Amongst these are their rights to their own territory, which no other government has any right to appropriate to itself, to partition nor to convey to any people or individual, and the right to enact their own laws, to administer and execute them. The seventh article of the treaty of 1835 stipulates that the Cherokees shall be entitled to a delegate in Congress! Can it be supposed that it was the intention of a people aspiring to the dignity of being represented in Congress, to have surrendered all the most essential elements of sovereignty, and to have transferred to another power the right to dispose of their territory without their consent, and to prescribe to them criminal and other laws? The articles of the treaty to which the undersigned have referred, are too explicit in their terms to admit of any doubt. But the whole treaty of 1835, from beginning to end, demonstrates that it was not only the purpose of both contracting parties, but that it was the principal inducement of the Cherokees to enter into that treaty, that they were to own forever, without molestation or interference, the lands which were ceded to them, and to be alone subject to laws made by themselves, and suited to their peculiar habits, customs, and condition. If resort be had to the clear meaning of the terms of the treaty, this conclusion is irresistible; and still more so, from the general tenor of the instrument and manifest intention of the contracting parties. The latter is the true and just rule for the interpretation of contracts between individuals, and it is still more proper in the construction of contracts between nations; and the more especially, where one of the parties is enlightened and powerful, and the other not only less so, but feeble and dependant. In such a case, is it either generous or fair to lay hold of the equivocal words of a single sentence, and, by perverting them to a meaning which was never intended by either party, to abrogate all the securities so cautiously and fully provided in other parts of the treaty?

The undersigned flatter themselves that, before your honorable bodies will sanction such a proceeding, you will at least satisfy yourselves that all other means to the desired end have already been exhausted, and that the claims of humanity sternly demand it at your hands. Does any such necessity exist?*

The undersigned might, perhaps, content themselves with answering this inquiry, by referring to the report of the enlightened and distinguished gentlemen who constituted the commission which assembled at Fort Gibson, in 1844, to inquire into all the matters now in controversy. It must be conceded that those gentlemen were eminently qualified to make a full investigation; and that there, on the very theatre of the alleged malversation, they possessed many advantages which others, not so circumstanced, did not enjoy; and that they devoted themselves to the discharge of the duty assigned them in the most impartial spirit, and with the most praiseworthy diligence. This commission was created for the special and sole object of inquiring into these very charges, as to all and each of which they entirely exculpated those against whom they were made, and, with an honorable frankness and independence, do not shrink from saying that the whole responsibility, for all the difficulties which have occurred, rests with the complaining parties, and the government of the United States, for the encouragement which it has given them in their resistance to the laws of their country. And, yet, these charges, thus authoritatively refuted, are again brought forward, and upon no other testimony than that submitted to the commissioners, and conclusively disproved upon every point. The undersigned had regarded that commission as a board of arbitration, and had hoped that their report would have silenced these complaints forever.

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* All the questions now presented were considered and decided by the Supreme Court of the United States, in the case of Georgia *vs.* Worcester and Butler. To the conclusive argument against the existence of the power in question, a reference is specially requested. That case will be found in 6th Peters's Reports.

The charges against the authorities of the Cherokee nation, which are made both in the message of the President, and in the report of the Commissioner, are of the most general character, and couched in terms well calculated to excite and mislead, although not so intended; such as—"internal feuds which call for the prompt interposition of the government;" "unprovoked murders by the stronger upon the weaker party, who have been compelled to seek refuge beyond the Indian country;" "if such a state of things is allowed to continue, the weaker party will be finally exterminated."

The undersigned propose to give to these general charges a more specific character, and to divest them of the false coloring which has been given to them, resulting as they are quite sure from just and benevolent feelings, improperly excited by false statements; and they do not, in the least, doubt that the result will be a general concurrence in the following opinion expressed by the commission of 1844:

"The complainants have not shown in any case that life has been taken or endangered by the Cherokee authorities since the act of union, except in the administration of wholesome laws. It cannot be denied that human life is in danger. But the danger lies in the frequent and stealthy incursions of a desperate gang of banditti—half-breeds, notorious in the nation as wanton murderers, house-burners, and horse stealers—but whose fraternity is not of the dominant party; nor are the dangers from these outlaws most dreaded by the parties who send up their complaints of the insecurity of life. The commissioners have discovered that, even while present on the spot, where they are able in most cases to elicit truth, complaints have come up either frivolous in the extreme, or not true. And it is believed that the old settlers and treaty party enjoy, under the act of union and the constitution of the Cherokee nation, liberty, property, and life, in as much security as the rest of the Cherokees."

The undersigned will not repeat what they have already said as to the character of the gentlemen who use this strong language, or the superior advantages which they enjoyed of eliciting the truth; but they indulge the confident hope that, before the American Congress adopt a different conclusion, and resort to measures so entirely unauthorized, so harsh, and so certainly destructive to the Cherokee people, they will look well to the character of the evidence which may be adduced, and inquire dispassionately whether the disturbances in the Cherokee country are not clearly attributable to other and opposite causes.

The only evidence submitted with the report of the Commissioner of Indian Affairs is *ex parte* affidavits, and most of these the affidavits of the near relatives of the persons alleged to have been murdered, and in some of the cases containing statements directly contradictory, exhibiting in a striking point of view the impossibility of any one remote from the scene coming to a satisfactory conclusion as to the weight of the testimony. The concluding paragraph of the Commissioner's report thus very justly characterizes this class of evidence: "It may be remarked that the signature or mark of Indians is easily obtained to papers of any description by persons of influence or authority, without the individual having any real knowledge of the contents or object of the paper he is signing; *little, if any, regard* is, therefore, to be paid to any document signed by these people generally, unless it be accompanied by satisfactory evidence that its contents were fully and fairly explained and understood by them, and that their signing it was a voluntary act, free from improper restraint or inducement thereto. Such evidence is usually supplied by the agent of the tribe; but none of this description accompanies the papers in question."

It is true that these remarks were made when it was the object of the Commissioner to resist the force of evidence in favor of the authorities of the nation, who seem to be the objects of his special aversion; yet it is not to be supposed that he would adopt a different rule when the purpose was to establish injurious and false charges against them. Yet it is upon such evidence as this that he has ventured, in the face of the report of the commissioners, to regard as established these calumnious charges which have heretofore been conclusively refuted. From the face of the papers submitted by the Commissioner, they do not seem to be authenticated in the form indicated by him, nor some of them in any other. Some of them do not even purport to be sworn to! For example: In the communication of Major Bonneville occurs the following: "This day came John Field, son of John Field, of Stony creek, and Archelaus Smith, both of the Cherokee nation; they *report* that, on Saturday evening, Charles, son of Archelaus Smith, was at a frolic," &c., going on to narrate the subsequent murder of Charles Smith. The statement not only does not appear to have been sworn to, but the relators do not say that they were present when the murder was perpetrated. The undersigned venture to say that nine out of ten of the papers appended to the report are entitled to little more authority.

They will briefly state the facts of the cases relied on as justifying the interposition of the government, and assert, in advance, that none of these murders had their origin directly or remotely in the political and party divisions of their country, or that they were either authorized by the authorities of the nation. They were acts of individual vengeance for the most atrocious murders perpetrated by some of the outlaws of the nation, who have not only never had any sympathy with those in authority, but have always been their malignant and implacable *enemies*.

On the 2d of November, 1845, a party of Indians, amongst whom were Thomas Starr, Ellis Starr, Washington Starr, Ellis Rider, and Ellis West, came to the house of R. J. Meigs, all armed. Mr. Meigs made his escape through a back door, when they fired at him, and then burned his house and everything in it. About a mile from the house of Mr. Meigs they murdered two Cherokees, and mangled their bodies in the most horrible manner. The feelings of the people were naturally roused to a high degree, and they proceeded in a body to the house of James Starr and Ellis Rider, and put them both to death. One of the sons of James Starr, who had before this been mortally wounded, was carried to Fort Washita, where, in presence of officers of the United States army, in immediate anticipation of death, he complained that his father, James Starr, was the cause of what had befallen him, and that he was the head of the lawless band which were constantly committing depredations in the country. The authorities of the nation not only had no participation in this transaction, but were wholly ignorant of any such purpose until it was executed. Nor did the police companies of the nation have any agency in it, for the simple reason, that there existed at that time no such body. They had previously been disbanded, and the light-horse company were only afterwards organized from the apprehension of similar atrocities. Whilst the undersigned will not now, and have never on any occasion justified this proceeding, yet there are outrages so flagrant as to threaten not only the peace but the very existence of society, to suppress which men, in countries more enlightened and better regulated, will take the law in their own hands. If it be said that the laws are fully adequate to the punishment of all crimes, the undersigned would respectfully reply, that the laws of Mississippi are quite as potential as those of the Cherokee nation; yet that they are not always resorted to, the hanging of the gamblers at Vicksburg a few years since, and their bodies left hanging on trees to feast the ravens, sufficiently attest. How immeasurably less in enormity were the offences of the Mississippi gamblers than the sanguinary acts of these Cherokee outlaws! It has not been seven years since a similar summary punishment of death was inflicted on four white men in the State of Arkansas. If it be asked why these Cherokee outrages have not been punished, the undersigned might well reply by asking why the much more unprovoked violations of law and the security of human life have not been punished in Mississippi and Arkansas? But they have another and more satisfactory reply—the matter was immediately taken out of their hands by General Arbuckle, the military commandant at Fort Smith. The undersigned solemnly assert that the above is a true statement of the facts of this case, which they are ready to verify before any impartial tribunal. The next case presented is that of the murder of Charles Smith, on the 27th of December last. It appears from the statement of this case that it originated in a drunken brawl at a frolic, and was followed by one of those acts of vengeance by no means peculiar to the Indian race. It is not only not stated to have originated in the party divisions of the country, but it is not even stated to which of these divisions the deceased and his murderer belonged. John Brown, the leader of the party which killed Charles Smith, was himself one of the old settlers, who alleges that Smith was killed when resisting the attempt to take him for having stabbed a Cherokee the night before, the said Brown being in execution of his duty as an officer to arrest him. The next is the case of Thomas Watie, who was killed some time about the 1st of November; by whom killed, or from what motives, is not stated, even on conjecture, and no circumstance whatever to justify the belief that it had any connexion with political matters. The same may be said of the murders of Swimmer and Stoane, about the same time.

These are the *unprovoked* murders which are set forth in language so well calculated to excite the feelings of all just-minded men, and which are regarded as justifying and even demanding the extreme measures which are proposed. Are there not other Indian tribes, of no greater population, where such cases are of more frequent occurrence? Is it not, indeed, a matter of surprise that they have not occurred much more frequently in the Cherokee country, under all the existing circumstances? The Cherokee people had been separated for many years. In that period there had arisen feuds of a deeply exciting character. A small fragment of the nation, less than one twentieth, had ceded their country to the United States. The great body of the nation were forced from their homes and the graves of their fathers for countless generations, under circumstances to which it is painful and unnecessary to recur. They were again reunited with that portion of their countrymen whom they regarded as the authors of the ruin of their country, and the unheard of sacrifices and suffering to which they had been subjected. Between themselves and some of their brethren who had first emigrated to the west, there was the widest difference in laws, institutions, and customs. All these differences of institutions and private feuds were to be reconciled. The undersigned appeal to the history of the last ten years to prove that the course which they adopted to this end was wise, forbearing, and conciliatory, and they do not doubt that but for the unwise interposition of the federal government and its military officers, they would have entirely succeeded, and that perfect order, repose, and happiness would have at this day existed. They feel it to be their duty to say, that to General Arbuckle more than to any other man, perhaps more than to all others, are to be attributed the blame and responsibility of the present state of things. He is doubtless a well-intentioned, but a deeply prejudiced and disappointed man, and his whole conduct, from beginning to end, has been that of an excited partisan. One of his first acts on the arrival of the eastern Cherokees at their new home, was to announce that he regarded the western Cherokees as possessing the only right of government in the country. Besides that, it was stipulated in the treaty of 1835 that the eastern Cherokees should enjoy in their new home the government of their choice—that right existed independently of that, or any other treaty. They constituted four-fifths, or more, of the population of the nation, and, being the majority, it resulted that on their reunion with their brethren west, the laws would be enacted and the government administered by the will of the majority.

The undersigned would here remark, that it is one of the charges made against them by the Commissioner of Indian Affairs, that on their arrival in the west they insisted upon the establishment of their own laws and constitution. This they had a clear right to do. If, by way of illustration, the new acquisition of Texas, and future additions to it from the neighboring departments of Mexico, should have a majority of the population and representatives of the whole Union, will they not have the right to elect the President of the Union, and to pass such laws as they may deem proper? The eastern Cherokees are denominated in the report the civilization, and the western Cherokees the hunter party. Was it unreasonable that the former, being more than double in numbers, should desire to elevate their brethren to the degree of civilization which they had attained, and should have been unwilling themselves to relapse into a state of comparative barbarism? But the eastern Cherokees neither attempted nor intimated coercion of any sort; but, on the contrary, invited their western brethren to meet them in convention. To this they acceded, and the result was the unanimous adoption of a constitution and policy based upon mutual concession.

But, to return to General Arbuckle: After the adoption in January, 1840, by the western Cherokees, of the act of union and the constitution, Gen. Arbuckle wrote to the Secretary of War on the 22d January, 1840, "that he had no doubt that a majority of the Cherokee people were in favor of the new government, and that he had informed the old settlers that he regarded their government as ended." Governor Stokes, the agent, and General Armstrong, the acting superintendent, made similar communications to their government; yet, notwithstanding all this, we find General Arbuckle, on the 28th of the same month, writing a communication to the War Department of directly opposite tenor and import, and all his acts and conversations had a direct and powerful tendency to defeat the work of reconciliation which had been so happily accomplished, and again to open the bitter fountains of party strife. Since that day to the present his ears have always been open to false statements from the most worthless persons, and even to general rumors, and frequently with no other information or authority he has offered his protection to dissatisfied Cherokees, and has thus promoted the strife which he professed to suppress.

In addition to all these causes, venal and interested persons, both Indians and white men, who have no other interest in the destiny of the Cherokee people than the hope of sharing a portion of the funds which they may receive, have constantly excited them against their government by holding out the inducement of large sums which would be distributed among them, in the event of a separation, as an indemnity for their lands. It is not surprising that, under all these circumstances, a few artful and interested men should have been able to enlist some adherents, who consist, for the most part, of idle, reckless, and lawless men; but it is surprising that their numbers are not much larger.

And the undersigned here assert and challenge an investigation, that a large majority of the western Cherokees are as much opposed as they themselves are to either of the measures recommended by the President, and are now residing in peace and contentment at their homes. The only anxiety which they feel is from well grounded fears of molestation by that portion of their people who have taken refuge in the State of Arkansas, from which they are constantly committing depredations upon the nation. As to the true character of these outlaws, who call themselves refugees, the undersigned beg leave to refer to the petition of the inhabitants of the county in Arkansas where they are located. Will it be denied that if a similar asylum were offered on the borders of any State in the Union, and military protection offered, and rations supplied to all the idle and dishonest who might choose to resort to it, a large number would assemble, and many more charges of oppression would be made, and quite as well authenticated? If the government of the United States will discontinue the encouragement which has always been given to reckless and lawless men to resist their government, by holding out to them not only protection, but support and maintenance, and negotiate a new treaty, as it has solemnly promised to do, looking to the interests of the whole nation, and all the parties into which it is divided, all the dissensions and violations of law and order will at once be terminated, and forever.

It is worse than absurd to say that these things have been provoked by the authorities of the nation. Their interests are all on the opposite side, as a pretext is thereby furnished for an interposition of the federal authorities, not only fatal to the continuance of the power now governing the nation, but which will inevitably end in the annihilation of the Cherokee people; whilst there is another party whose interests are promoted by these causes, and by them alone can their selfish and interested purposes be consummated. The undersigned are not only willing, but anxiously desire such a new treaty. The eastern Cherokees are prepared to prove at any time that they have to this hour never received one dollar for ten million acres of land, worth at least twenty millions of dollars, which was taken from them in 1835. Every dollar which has been received has been appropriated under the provisions of the treaty for spoliations, transportation, and other like charges. About five hundred thousand dollars of this sum has been invested by the government of the United States for certain public purposes, leaving not one dollar as the equivalent for their valuable country east of the Mississippi. The lands to which they were removed in the west cannot be regarded as the consideration for their lands east, for the former were secured to them by the treaties of 1819 and 1828, whenever they might choose to remove.

The undersigned desire in this connexion, and in conclusion, to notice some of the arguments of the Commissioner of Indian Affairs. It is now for the first time asserted that in the treaty of New Echota, the federal government acted under a misapprehension in supposing that the Cherokees east had any right to the country west of the Mississippi. In what position, if true, does this assumption place the government of the United States? The Cherokees east were induced to remove by the assurance given them that they had such title, and that a permanent home awaited them there. The United States has received all the benefits of the treaty promised them. The Cherokee country thus ceded is at this time thickly settled, and constitutes a valuable portion of more than one State. But a high officer of the government now coolly steps forward and says: "We were mistaken in supposing that we had any right to remove you to your present home; that country belongs to others, and neither we nor you have any title whatever to any portion of it." Yet no indemnification whatever is offered for this failure of title! But the position is as destitute of all just foundation as would its assertion be immoral even if it were true. The country west was ceded not to the western Cherokees only, but also to such of the eastern Cherokees as might wish or be induced to remove to it. A title was thus conveyed, which could at any time be made perfect by the eastern Cherokees removing west. Another position of the Commissioner, which the undersigned only notice from respect to the source from which it emanates, is, that this provision was only to inure to the benefit of those who wished or might be induced to remove, and that as the eastern Cherokees did not wish to remove, but did so under the coercion of force, they are not entitled to the benefit of the provision.

The undersigned submit, that the argument of the bayonet, when applied to a weak people incapable of resistance, is as powerful an inducement as could be held out. They certainly found it so. But how are the western Cherokees affected by this discrimination? If all the eastern Cherokees had removed, from the conviction of the superior advantages offered by the country west, their western brethren would have been bound to have received them. What is the difference, whether they were thus induced by the power of reason and persuasion, or the more potential argument of the bayonet? The error which runs through the whole argument of the Commissioner is, that the country west was granted to the western Cherokees. It was not, but to them and such of their eastern brethren who might *wish or be induced* to remove; and the right of the latter became perfect by the act of removal. It is not true that the treaty of 1828 contemplated, as is stated by the Commissioner of Indian Affairs, the removal of only a portion of the eastern Cherokees. The words used in the eighth article of that treaty are the following: "And that their brothers yet remaining in the States may be induced to join them and enjoy the repose and blessings of such a state in future, it is further agreed," &c. Do these words indicate in any way that it was only a portion of the Cherokees east whose removal was desired and anticipated? The words include all of them, and there is not the slightest pretext for limiting their force; and besides, the policy of removal of all the Indian tribes to the west of the Mississippi had not only been foreshadowed, but distinctly developed. It is also said that the eastern Cherokees have no rights under the treaty of 1828, because they were not parties to it. This is equally a fallacy. If A purchase land of B, and takes a conveyance to himself and C, the title of the latter is good, and cannot be divested by any act of A. It is certainly a new doctrine that the signature of the grantee is necessary to the validity of a deed in his favor. But even if it were otherwise, the undersigned take leave to say that the argument has more the character of a technical quibble than befits the occasion upon which it is used. They would add, that from the first removal of a portion of the Cherokees to the west, both countries have, in a great degree, been regarded as common property, and that during the whole time eastern Cherokees have gone west, and western Cherokees removed to the east, and have always been received on a full footing of equality. The undersigned find the following passage in the report of the Commissioner, in which there are more errors than there are lines: "In regard to the act of union, those who signed it were not selected by the people for that purpose, and had no authority to act for them; but if they had, they signed it upon the express understanding that it was not to be binding unless ratified by the people; that the western Cherokees were to be proportionably represented in the government; that neither John Ross nor William S. Coodey was to be a member thereof; that they were to receive each seventy dollars or upwards of the money to be distributed under the treaty of 1835, as per capita, and to have an equal interest in the lands east of the Mississippi, still claimed by the eastern Cherokees."

The act of union was essentially the act of the great body of the western Cherokees. John Rogers and John Brown were opposed to that measure at the convention in 1839, and invoked the authority of the United States, which so excited the western Cherokees that they were deposed from their authority as chiefs; after which, Brown went to Mexico, and Rogers still sought the protection of General Arbuckle. At a subsequent meeting at Tahlequah, on the 15th of January, 1840, the act of union was again ratified, in the language of General Arbuckle, "by a large majority of people," and the new government was recognised by him.

Afterwards, in June, 1840, the small remaining fragment of the western Cherokees who constituted the party of John Rogers, assembled at Fort

Gibson, and, with the approval and co-operation of John Rogers, signed the act of union and the adoption of the constitution and laws. There was no express or other understanding that it was again to be submitted to the people. The western Cherokees not only had one-third of the offices, but more; and on the second election, a majority of them. It was not stipulated, nor even demanded, that John Ross and William S. Coodey should be excluded from the government. There was no stipulation as to any sum to be distributed per capita, and it was not possible that there should have been, because it could not have been ascertained what amount would remain for distribution. All that has been received has been paid for spoliation and other claims, in which the western Cherokees have largely and equally participated. If anything should be hereafter obtained from the justice of the federal government, they are entitled to share it; so of the claims of the eastern Cherokees for the lands taken from them in 1835; if anything is ever received from that source, their western brethren are entitled to share that also. The undersigned believe that they have conclusively established the following propositions:

1st. That the Cherokee country west was ceded not to the first emigrants alone, but also to such of the eastern Cherokees as might remove to them; and that the treaties of 1819 and 1828 convey to them a title made perfect by the act of removal.

2d. That this title is confirmed by the act of union, and adoption of a constitution in August and September, 1839.

3d. That it was confirmed afterwards, in the most authoritative form, at Tahlequah, on the 15th day of January, 1840; and so regarded by General Arbuckle, Governor Stokes, the Cherokee agent, and by Major Armstrong, the acting superintendent of the affairs of the Indian tribes west; and it was further confirmed by the act of 26th June, 1840.

4th. That it was confirmed by the acceptance of office by the chiefs of the western Cherokees and the treaty party, and the general approval of the Cherokees of both of these parties, and their participating in the funds to which that union alone gave them title.

5th. That by the terms of the act of union which were ratified in January, 1840, and independent even of that act, is the territory vested in the Cherokee nation, as a nation, and that the constituted authorities of that nation alone have the power to partition or otherwise dispose of it.

6th. That such partition and the extension of the laws of the United States over the Cherokee country would be an open and palpable violation of treaty stipulations.

7th. That the adoption of these measures, even if there was any right to do so, would produce the most disastrous consequences to the whole nation.

8th. That neither of the measures proposed is desired by a majority of the old settlers; but that a large majority are opposed to the same.

9th. That the malcontents of the nation consist of idle, reckless, and lawless men, and a few others more intelligent and respectable, but whose purposes are wholly venal and selfish.

10th. That the number of these has been only increased by the mistaken policy of the government of the United States in encouraging insubordination and resistance to the laws, by furnishing provisions and an asylum and military protection to all who, under any pretext, however false, ask for the same.

11th. That the Cherokees east have not yet received one dollar for the valuable country taken from them in 1835; and that it is the high duty of the United States to make them such compensation, which can only be done by a new treaty.

These propositions are all sustained by the well-established facts and conclusive arguments of the commission which was appointed by the President, of 1844, specially charged to investigate the subject in all its bearings. To that report the undersigned refer your honorable bodies, and beg that it may be printed herewith.

The undersigned respectfully request that the issues which have been presented by the message of the President and report of the Commissioner of Indian Affairs, may not be allowed to supersede the just complaints imbodied in the memorial to the President, which they had the honor to present on the 8th of November, 1845, and which is herewith filed. Your honorable bodies must perceive that so various are the interests involved, and so complicated the questions which are presented, that it is impossible that they can be fully provided for and justly settled by any act of legislation by Congress; that the means of correct information which the executive department can command must be limited and defective; and that full justice to all the parties can only be attained by a new treaty, made by just and impartial men, by which all the conflicting interests may be harmonized and adjusted. That the undersigned desire this, is the best proof which they can give of their confidence in the justice of their cause and the uprightness of their conduct. If any other portion of the Cherokee people object to this, a proposition so fair and so beneficial to their country, it will equally prove their want of such confidence, and that they prefer that the settlement of this deeply interesting question should be referred to those who must of necessity want equal means of full and correct information. If a separation should take place, it must be obvious to all that, in such an event, it will be indispensable that the two divisions of their people should not possess conterminous territory, but that the more distantly they are located from each other the better.

It will be seen that the undersigned have not used the language of humble suppliants, but that of men who know their rights, however unable they may be to maintain them—of men conscious of having suffered great wrongs, and apprehending still greater which have been threatened—an apprehension, however, which is greatly modified by an abiding confidence in the sense of honorable justice of the American Congress.

WASHINGTON CITY, *April* 30, 1846.

JNO. ROSS, *Principal Chief.*
JOHN LOONEY.
DAVID VANN.
STEPHEN FOREMAN.
C. V. McNAIR.
R. TAYLOR.
T. WALKER.
RICHARD FIELDS.
JOHN THORN.

Report of the Secretary of War, communicating the report and correspondence of the board of inquiry to prosecute an examination into the causes and extent of the discontents and difficulties among the Cherokee Indians.

War Department, *February* 22, 1845.

Sir: In answer to a resolution of the Senate of the United States of the 21st instant, requiring the Secretary of War "to transmit to the Senate the report of General Roger Jones, Colonel Mason, and P. M. Butler, esq., who have recently, under his instructions, as a board of inquiry, prosecuted an examination into the causes and extent of the discontents and difficulties among the Cherokee Indians, with the instructions, correspondence, and evidence connected therewith; and also a copy of any correspondence held by said board with the heirs or representatives of the Ridges and Boudinot, or any of them," I transmit, herewith, all the papers referred to in the resolution. Considering the limited time remaining of the session of Congress, I transmit the original papers, and respectfully request that they may be returned to this department when the Senate shall have no further occasion for them.

Very respectfully, your obedient servant,

WILLIAM WILKINS,
Secretary of War.

Hon. W. P. Mangum,
President of the Senate.

War Department, *October* 18, 1844.

Brigadier General R. Jones, adjutant general, Lieutenant Colonel R. B. Mason, of the 1st regiment of dragoons, and P. M. Butler, esq., Cherokee agent, are constituted a commission to proceed to the Cherokee nation, and investigate and report upon the matters contained in the instructions of this department of this day's date, and addressed to them.

WILLIAM WILKINS,
Secretary of War.

War Department, *October* 18, 1844.

Gentlemen: During the last session of Congress, three delegations of Cherokees were in this city: one representing the "Ross party," with John Ross at its head; one claiming to represent the "old settlers," with John Rogers at its head; and the other claiming to represent the "treaty party," so called. It was alleged by the two latter delegations, that grievous oppressions are practised upon them by the Ross or dominant party, insomuch that they cannot enjoy their liberty, property, and lives, in safety; and that it was impossible for them to live in peace in the same community with their alleged oppressors. It was further represented by the "old settlers," that the act of union, by virtue of which their government was superseded, and they were subjected to the constitution and laws of the "Ross party," never was authorized or sanctioned by their people, and that the western Cherokees, who signed it, not only did so without authority, but were induced to do it by promises and assurances which have never been realized.

On the other hand, John Ross and his delegation represented that the "old settlers" and "treaty party" were enjoying, under the act of union and their freely adopted constitution, liberty, property, and life, in as much security as the rest of the Cherokees, and were treated with the same indulgence; that the great mass of the "old settlers" and "treaty party" were content with their condition; and that all the difficulties were originated, and are kept up, by a few restless individuals, without any real cause for complaint.

The copies of letters addressed by me, on the 8th July last, to John Ross and others, and on the 9th and 17th of the same month, to John Rogers and others, will show you the views entertained by me of these Cherokee difficulties and disagreements; and that among the measures which, it was supposed, it might be necessary to adopt as the duty of the government, and just to all parties, was the raising of a commission to inquire, on the spot, and in the Cherokee nation, into the conflicting allegations made by the respective parties into which that people is unfortunately divided.

I hoped that, on the return to their nation of the several delegations to whom the above letters were addressed, all would have been disposed to sit down in harmony, and that the differences so long existing among the Cherokee people, and so long retarding their further advance in the civilization and refinement in which they have already made such commendable progress, would have disappeared. If this change, so ardently desired, had happily taken place, the commission referred to would have been unnecessary.

A letter, however, received from Major William Armstrong, dated 14th ultimo, addressed to the Commissioner of Indian Affairs, and referred to me, and a communication to the Adjutant General, from General Gaines, dated 30th ultimo, with its respective enclosures, (of which several papers, marked from 1 to 10, I send copies,) have induced me to recur to the idea of an inquiry, in the nation, into the real state of the facts which are alleged on either hand, and contradicted on the other, by the opposing parties.

It is one of my purposes, and a main one, to know if any considerable portion of the Cherokee people are arrayed in hostile feeling and action against those who are in the rule of the nation; whether confined to a few or many; and the bitterness of the hostility to the dominant party; and, again, to ascertain whether correspondent dispositions and conduct prevail in the majority, who administer the government, towards the minority, consisting of the "treaty party" and "western Cherokees;" and the lengths of oppression, resistance, and violence, to which the excitement of each against the other has severally led the parties, and may, in your opinion, from a view of the whole ground, still further lead them. Inquire whether, in fact, the discontent in the Cherokee country is of that extent and intensity in the great mass of the "old settlers" and "treaty party," that they cannot live peaceably under the same government. Whether any and what specific acts of violence or oppression, or of deprivation of the possession of property, have been exercised upon the chiefs or common Indians of the "old settlers" or "treaty party," since the arrival of the "Ross party" in the Cherokee country west, in 1838; and what means, if any, were in preparation by the Cherokee government, or any of the "Ross party," to prevent or break up, by violence, the council proposed to be holden by the "old settlers" and "treaty party," at the mouth of the Illinois, on the 16th ultimo.

These and all kindred inquiries will be within the scope of your authority.

My first object is to endeavor to reconcile the two implacable portions of the same people—to make them friends; and, to this end, to inform myself of all that is necessary to the soundest judgment of the course that will best execute our intentions. If, however, reconciliation should prove impracticable, it will remain for the government, upon the truth being known from your report, to adopt such measures as circumstances, on the fullest consideration of them, shall seem to require, and to give such redress for any real wrong or oppression as the United States may lawfully grant.

On arriving in their country, you will immediately desire both parties to abstain from any movement calculated in the most remote degree to interfere with the beneficent designs of the government, and to wait the decision that shall be made on your report.

If either of the parties concerned shall request you to investigate and report upon any other matter of importance, and properly pertaining to the object of this inquiry, you will proceed to do so in the same manner as if specially instructed.

In matters where your own knowledge and observations will enable you to speak with confidence, it is not necessary that you should take testimony; but, in relation to all other points of inquiry, you will seek information from proper and accessible sources, taking care that no unnecessary delay shall be interposed from any quarter. Any two of your number are authorized to proceed with the investigation, although it is expected that you will all be present, if practicable; and, as the information is wanted at the commencement of the approaching session of Congress, or as soon thereafter as practicable, it is enjoined upon you to proceed forthwith upon this service.

The investigation may be held at such place or places as will most expedite its progress, and afford security to those who may be required or feel it necessary to attend.

Very respectfully, your obedient servant, &c.,

WILLIAM WILKINS,
Secretary of War.

Gen. R. Jones,
Lieut. Col. R. B. Mason,
P. M. Butler, Esq.,
} *Commissioners, &c.*

Fort Gibson, C. N., *January* 17, 1845.

Sir: I have the honor herewith to forward the report of the special commission appointed to inquire into the complaints and difficulties in the Cherokee country, which will be presented to you by Lieutenant Lay, of the army, (the secretary of the board,) the officer charged with this service.

Accompanying the report will be found the *journal* (of 53 pages) of the proceedings of the commission, marked No. 2, which is an exact record of all that occurred, or came under the notice of the commissioners, in the execution of the trust confided to them; also, the *minutes* of the investigation, (of 57 pages,) marked No. 1, in which the examinations made, touching the matters of inquiry, are recorded in detail, in a manner which it is hoped may be satisfactory to the department.

With each document will be found a separate appendix, with a single series of indices applied to both, marked from "A" to "V," inclusive. The paper "S" has been withdrawn from the file, to be separately laid before the department, with a letter.

I shall proceed to-day to Fort Smith; thence, without delay, to New Orleans; and, after remaining a few days to inspect the military posts in its vicinity, pursue my journey to Washington.

I am happy to inform you that everything is tranquil in the Cherokee nation, and, I have no reason to doubt, will continue so, in the hope and expectation of the people that something will quickly be done by the government to settle the vexed subjects which have been so long agitated. One thing I deem to be important—that the parties complaining should at once be made to understand, in the most decisive manner, that *the idea of a separation* of the Cherokee people will not be countenanced or tolerated by the government.

For any information touching the Cherokee affairs, or connected with our proceedings, I beg leave to refer you to Lieutenant Lay.

I have the honor to be, with great respect, your obedient servant,

R. JONES,
Adjutant General and U. S. Commissioner.

Hon. WILLIAM WILKINS,
Secretary of War.

P. S.—I beg leave, respectfully, to call the attention of the department to the paper marked "V," appendix, being the report of Capt. Cady, who was specially instructed to examine the Cherokee laws, with a view to criticism. His views are fully concurred in.

R. J.

Report of the United States commissioners, appointed by the Secretary of War, October 18, 1844, *to inquire into the complaints and difficulties of the Cherokees.*

FORT GIBSON, CHEROKEE NATION,
January 17, 1845.

The Hon. WILLIAM WILKINS, *Secretary of War:*

SIR: The undersigned, commissioners sent to the Cherokee nation to inquire on the spot into the difficulties and disagreements among that people, and into the conflicting allegations and complaints made by the respective parties into which they are divided, respectfully submit the following report:

In obedience to your instructions of the 18th of October, the commission met at Fort Gibson the 15th of November, the earliest day practicable after the receipt of your orders. Preliminary and all proper measures were immediately taken, necessary for the prompt execution of the task assigned.

The 4th, 5th, 6th, and 7th December, 465 Cherokees were met in council at Tahluntuskey, twenty-five miles south of Fort Gibson, when the beneficent designs of the government and the business of the special commission were announced and fully explained, as may be seen from the proceedings which accompany this report. Of the "old settlers" assembled at this place, there were 286; and 199 of the "treaty party," so called.

The commission adjourned the 7th, to meet at the old agency, seven miles east of Fort Gibson, on the 10th, where the session continued until Saturday the 14th, and then adjourned to meet at the fort.

At these several places and meetings the Indians had the fairest opportunity afforded them to come in and make known their complaints, if any they had, in any way they might choose. They chose to do this by deputation; and accordingly they appointed committees of twenty-four, to represent each of the complaining parties. The commissioners mingled freely with the people everywhere, conversed with many, inquired of individuals of every party, and on all occasions sought information from all accessible sources, in order, if possible, to fetch out the truth, and the real state of facts, alleged or contradicted by the opposing parties.

Twelve days were allowed the people to collect at the different places designated, after the time appointed for the meeting, (December 4,) for which ample notice had been published and spread through the nation. The whole number was 908, of which 546 are "old settlers," and 362 of the "treaty party." It was remarked, that many were "half-breeds," while some could not be distinguished from white men; and it was subsequently ascertained that 155 were not Indians. Most of the individual complainants appear to be of this class. The collected mass do not indicate the number of individuals present who had come to complain of "wrongs and oppressions" alleged to be practised upon the "western Cherokees" by the dominant party. Of this class the proportion is small, compared to the mass, whose main purposes doubtless were to look after moneys claimed of the United States for the partition of their country, now in joint occupancy with the eastern Cherokees, and the promised "per capita" under the "act of union." These considerations, it is believed, brought the people together more than anything else, being matters which their headmen could make them understand very well, and to which the many who came to hear or to claim the right are ever prompt and ready to listen. The eagerness to record *names* shows how little the real purpose (by many) was at first understood. Some, who could not come, thought it so important to register their *names* as to request permission to do so by proxy.*

On the other hand, it was stated that many were kept back through fear of the "police companies" of the nation. This possibly may be true in some degree; but, from similar statements of alarm and apprehended molestation, which proved to be more imaginary than real, the commissioners may doubt the fact. In this connexion, it should be mentioned that the ill-timed appearance of these police companies, on the second day of the council held at Tahluntuskey, met the decided disapprobation of the commission. The bad taste evinced by their obtrusive presence on such an occasion was rebuked, by directing them to leave the ground before sunset, and not again appear as an armed body, &c.

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* It was told to the "old settlers," if as many as 400 warriors could be enrolled, their country would be divided, and that they would get money from the United States for the part assigned to the eastern Cherokees.

The complaint and denial of the "act of union" was the first in the order of examination, it having been represented to the government "by the 'old settlers' that the act of union, by virtue of which their government was superseded, and they subjected to the constitution and laws of the 'Ross party,' never was *authorized* or *sanctioned* by their people; and that the western Cherokees who signed it, not only did so *without authority*, but were *induced to do it by promises and assurances which have never been realized*."—(*Letter of instructions*, October 18, 1844.)

It appears that a general meeting was held by the eastern and western Cherokees, at Takatoka, (Double Springs,) in June, 1839, which broke up without being able to unite the two nations. The eastern Cherokees, joined by a few of the "old settlers" or western Cherokees, called another meeting at the Illinois camp ground, at which all parties were invited to attend, July 1, 1839. The chiefs, and, it is understood, most of the principal men of the "western Cherokees," took no part in the meeting, but assembled at Fort Gibson. The eastern and a portion of the western Cherokees, who met at Camp Illinois in July, signed, by committees, an act of union, dated July 12. It also appears that, on the 23d of August, that portion of the "western Cherokees" which had met the emigrant party deposed their chiefs, John Brown and Captain Rogers, for the reasons set forth in a series of resolutions, to which are affixed 261 names, said to be western Cherokees. The same day they subscribed to the act of union of 1839; and the registry of names contains more than 1,500, among which are the signers of the resolutions deposing their chiefs. It is evident that the procedure of the "western Cherokees" at Camp Illinois, in July and August, 1839, was that of a minority of their "nation," which, in most cases of a compact to unite two separate communities, would be void.

It was seen that there still existed in the Cherokee country two conflicting self-styled governments, and a state of things altogether adverse to continued peace and harmony. The President, laudably anxious to restore quiet and a regular government, endeavored to effect this object.

Under instructions from the War Department, General Arbuckle called a meeting, in April, 1840, for the purpose of forming a complete union of the Cherokee people, which broke up without any definitive action. A second effort was made, that resulted in bringing the parties together at Fort Gibson, in June, 1840, and the signing, by the deputations or committees of each, of the second act of union the 26th of that month.

With regard to that meeting and its proceedings, it appears—

1. That a committee of the "western Cherokees" duly attended, deliberated and consulted together for many days.

2. That they were regarded by General Arbuckle and the deputation from the government of the "eastern Cherokees," which met them, as duly authorized representatives of their people, their authority to act as such *not being questioned at the time*.

3. That their chief or headman, Captain *John Rogers*, though personally not well inclined to the union, lent the sanction of his presence all

the time; that he nominated Andrew Vann, one of the headmen of his side, to be the second chief of the nation, under the terms of the compact, before it was signed; and afterwards, the same day, gave the toast, "*What has been done this day, may it never be undone,*" (in taking wine with Richard Taylor, one of the committee of "eastern Cherokees.")

4. That the stipulations with regard to *office* were at once fully and satisfactorily carried out, and that many of those who now deny its validity, and several who signed it, took office and the required oath under the act, among whom are the son and brother of the ex-chief, (*Captain Rogers,*) at the time and now considered two of the headmen of the western Cherokees.

5. That *Captain Rogers*, and many others, have received from the national treasury of the new government, thus consolidated, moneys for old claims or services rendered under the old government some more than ten years prior to the union.

6. That the proceedings at Fort Gibson were never referred back to the people of the "western Cherokees" for confirmation, nor does there seem to have been any intention of such reference. What was said in this connexion appears to have been in reference to the "*constitution*" which was furnished by the "eastern Cherokees," and subscribed to at the same time by the committee of "*western* Cherokees;" and

7. That the now complaining parties acquiesced quietly in the new government, which went into, and long continued in operation, peaceably and uninterruptedly.

Of the committee of *twelve* who signed the act of union of 1840, as deputies of the "western Cherokees," but now deny authority (except one) for so doing, *seven* of the number were chosen by the same party, the 6th of December, at Tahluntuskey, with others, to represent their complaints before this commission! If the deputies by whose instrumentality their government was merged, and the independence of their people as a separate community lost forever, acted in 1840 "*without authority,*" or even exceeded the measure of delegated powers in a matter so weighty, can it be believed that *seven* of the number would be deputed now to represent them in any capacity? Such abiding confidence in agents, unauthorized or faithless, is not characteristic of the red men, and widely departs from custom, as the dark and gloomy deeds recorded in their history mournfully attest.

The commissioners believe that the authority for the proceedings on either side, at Fort Gibson, in June, 1840, was adequate; that the benefits in which the western Cherokees were to participate in the way of "*per capita,*" &c., were calculated upon; and that the expectancy of such pecuniary gain induced many, and reconciled others, to unite as one nation under one government; while all, for the most part, were more anxious to see harmony restored among the Cherokee people than averse to the union—the measure generally believed, at the time, best calculated to insure it. And the commissioners are of opinion that the "act of union" was acquiesced in, and virtually confirmed by the Cherokee people; but they desire it to be distinctly understood that this opinion is not without some qualification, as will be seen in another part of the report under the appropriate subdivision of subjects.

* * * "Were induced to do it [sign the act] by *promises* and *assurances* which have never been realized."

The assurance that the "western Cherokees" should share in a just proportion the offices of the government for the first constitutional term, according to the compact, was realized at once; but no stipulation respecting appointments in a representative government could have been made to go beyond the constitutional *term* of the elective offices. The first general election was in August, 1841, when the voice of the aggregate people alone could be heard in deciding who should or should not then fill the various offices. But so completely do party lines seem to have been obliterated at that time, that the majority of both legislative bodies, and of the offices generally, were from among those formerly known as *western* Cherokees.

The promises in the way of money consideration must have been hypothetical, and may be illusory, as their realization entirely depends upon the construction which it is understood the government may yet have to give to certain important provisions of the treaty of 1835–'36, and the various appropriations by Congress for their due execution.

In regard to the pecuniary expectancies based upon the avails of eastern lands, in a division of the "balance" between the people, (the "*per capita*," 15th article,) the western and eastern Cherokees stand alike. But this is an important point, not to be overlooked whenever the *complaint-in-chief* of the "old settlers" may be finally considered by the United States.

Second. "It was alleged by the 'old settlers' and 'treaty party,' so called, that grievous oppressions are practised upon them by the Ross or dominant party, insomuch that they cannot enjoy their liberty, property, and lives in safety, and that it was impossible for them to live in peace in the same community with their alleged oppressors."

* * * Inquire "whether any and what specific acts of violence or oppression, or deprivation of the possession of property, have been exercised upon the chiefs or common Indians of the 'old settlers' or 'treaty party,' since the arrival of the 'Ross party' in the Cherokee country west, in 1838."—(*Letter of instructions.*)

1. Many specific complaints have been entered of the deprivation of *liberty*, by arrests alleged to have been made without just cause. Some of the arrests, it appears, were made on the requisition of the United States authorities, and others, in general, for sufficient cause; some on suspicion, in times of great excitement and alarm, when vigorous measures were deemed requisite for the maintenance of peace and good order. But it does not appear that the arrests have been numerous, or wantonly made, though it is likely that the surveillance exercised by some of the police companies may, in some instances, have been carried too far. The arrests complained of occurred in the autumn of 1843, none having been made since.

2. "*Deprivation of the possession of property.*"—Most of the complaints under this head refer to the national reservation of the *salines*, always held to be public property, and so declared by the "old settlers" in their laws as far back as 1829, and again in 1833, when they were re-enacted and amplified, but which fact they did not reveal to the commission. The existing Cherokee government, in 1841 and 1843, only confirmed and amended what their predecessors had established, as the sensible laws on the subject show. The authorities evince a commendable spirit of just regard for the rights of individuals, by appointing intelligent agents to

value the improvements and outlay, with a view to reimburse those dispossessed.

The general fairness of the valuation will appear from the close coincidence of the estimates just made by Captain Woods and Lieutenant Kirkham, at the instance of the commission, with those made by the agent with regard to Captain Rogers's saline. The authorities have erred, it is thought, in their indiscriminate claim of *salines* as "national reservations," where there was no natural flow of water, and where, but for *individual* labor, money, skill, and enterprise, in searching and boring for and *obtaining* the salt water, the premises would have been valueless as a saline. Bluford West is a sufferer by such assumption of national right, deemed by the commissioners to be unjust, if not oppressive; and it is hoped that he will be reinstated in his valuable fountain and expensive improvements. If his case comes within the existing law, it surely ought to be amended.* Except in like cases, if there be any, of salt water procured solely by private enterprise, complaints of the privation of property are neither just nor reasonable.

3. "*Cannot enjoy their lives in safety.*"—The complainants have not shown in any case that life has been taken or endangered by the Cherokee authorities since the "act of union," except in the administration of wholesome laws. It cannot be denied that human life in the Cherokee country is in danger—great danger. But the danger lies in the frequent and stealthy incursions of a desperate gang of banditti—"half-breeds"—notorious in the nation as wanton murderers, house-burners, and horse-stealers, but whose fraternity is not of the dominant party; nor are the dangers from these outlaws most dreaded by the parties who send up their complaints of the insecurity of life. Since the commission has been in the nation, not less than three or four wanton Indian murders have been committed; two within the line of a conterminous State. The use of whiskey is one great cause of these frequent murders.

All the complaints admit that the forms of the law were duly observed. But in what community, even the most enlightened, do parties defeated or convicted, including sympathizing friends, feel satisfied with the judgment of the court or verdict of a jury?

The ample share in the offices of the nation by the western Cherokees, especially in the judiciary, (for the bench has been filled chiefly from among them,) ought to lull suspicion of partial administration of the laws, and at least encourage them in the reasonable hope of equal security in life, liberty, and property.

In view of all these ascertained facts, the allegation "that they cannot live in peace in the same community with their alleged oppressors" is of little weight, and ought not, in the opinion of the commissioners, to be entertained.

The commissioners have discovered, that even while present on the spot, where they are able in most cases to elicit the truth, complaints have come up, either frivolous in the extreme, or not true. And it is believed that the "old settlers" and "treaty party" enjoy, under the "act of union" and the constitution of the Cherokee nation, liberty, property, and life, in as much security as the rest of the Cherokees.

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* It is due to the Cherokee authorities to state, that the valuing agent declares no mention was made to him that Mr. West's saline was not a natural one; and it is further stated, that salt had been manufactured at the same place before any wells were sunk.

Third. Inquire "what means, if any, were in preparation by the Cherokee government, or any of the 'Ross party,' to prevent, or break up by violence, the council proposed to be holden by the 'old settlers' and 'treaty party' at the mouth of the Illinois, the 16th of September, 1844."

The communication from General Arbuckle to the Adjutant General, dated September 14, 1844, and accompanying papers, on file in the War Office, show the views of the Cherokee authorities at the time, as seen in the following extract from the letter of the acting chief, George Lowry, to Captain Armstrong, the superintendent:

"CHEROKEE NATION, *September* 9, 1844.

"As regards your inquiry, 'whether or not any objection will be made by the Cherokee authorities to the meeting contemplated to be held by John Rogers and others, at the mouth of the Illinois river, on the 16th instant,' I have to reply that there will be.

"The considerations of duty and necessity which prompt to this course, in order to preserve unbroken the peace that so happily reigns throughout our country, and to maintain the constitution and laws of the Cherokee nation, will be, it is hoped, evident both to yourself and to your government.

"If the intentions of the originators of the contemplated meeting were simply to petition the government of the Cherokee nation for the redress of any grievances which they may suppose they have sustained in their persons or property, or under which they are now laboring, no one could object. That right has never been denied any citizen of this nation. But it is well known that such is not the case, and that their intentions are to agitate measures, in themselves highly exciting, and which have for their avowed ends a division of the Cherokee people, and the overthrow of their government."

The means in preparation, and which, it is believed, would have been adopted by the Cherokee government, if necessary, to prevent or break up the council proposed to be holden at the mouth of the Illinois, in September, were the police companies of the nation.

GENERAL OBSERVATIONS.

The commissioners do not believe that any "considerable portion of the Cherokee people are arrayed in hostile feeling and action against those who are in the rule of the nation."

The "bitterness of hostility to the dominant party," whatever it may be, it is believed, is confined only to a few. In the same relative proportion, probably in a less degree, like feelings and corresponding dispositions prevail in the majority toward the minority. But the masses, on either side, it is thought, are as well disposed to each other as in most communities divided into political parties, due allowance being made for the peculiar people.

In regard to the "lengths of oppression, resistance, and violence, to which the excitement of each against the other has severally led the parties, and *may in your* [our] *opinion, from a view of the whole ground, still further lead them,*" the undersigned are well satisfied, in their own minds, that this mainly depends upon the course which the government may hereafter pursue towards the parts—the few, who, irrespective of the whole nation, come forward to represent the fraction of these parts at the seat of government. Nothing is more calculated to keep alive the flame of discord in the Cherokee nation, than the belief that the restless or discontented, though comparatively few in number, will always find a ready audience at Washington, and the hope that complaints of oppression, and the like, may enlist the sympathies of the government and the community. It is far from the intention or wish of the commissioners to intimate that complaints of alleged wrongs and grievances of any portion of the Indian families should not distinctly come up to the ear of the President. But on the mode and manner in which these complaints are made and entertained, may depend the harmony, if not the integrity, of the government of the Cherokee nation.

Fourth. "If either of the parties concerned shall request you to investigate and report upon any other matter of importance, and properly pertaining to the object of this inquiry, you will proceed to do so in the same manner as if specially instructed."

Under this discretionary authority, two complaints have been entertained and considered; and, although the last, doubtless they constitute the head and front of the array of grievances sent up to the department, and but for which, the lesser griefs, magnified as they have been, most probably would not have been known, if ever felt.

THE "OLD SETTLERS"

Claim indemnity of the United States for the deprivation of a part of their country, which had been ceded to them as a separate "nation."

The commissioners fully agree with the complainants, that, under the faith and solemnity of treaties, fairly and understandingly entered into, in 1817, 1819, and 1828, and 1833, between the United States and the "Cherokee *nation* of Indians west of the Mississippi," they held a clear and indefeasible right and title to the lands described in the said treaties, and which they possessed and occupied at the time that the nation of Cherokees east was thrown into their country, by virtue of the treaty of December 29, 1835. The bringing together the *two* nations was the act of neither. The uniting these separate communities, for so many years parted by the Mississippi, was the consummation of a measure incidental, perhaps, to a fixed national policy, which the parties could not, by any possibility, have averted. But this inability of the weaker party, the Cherokees, to keep asunder, does not, it is believed, absolve the United States from their obligation to make to them now just indemnity. What has been done under the treaty of 1835, cannot be undone now. The Cherokee family cannot be divided, and remain within the jurisdiction of the United States. Their union ought to be preserved. But, while the compact entered into, known as the "act of union," is *valid* for all the practical purposes of the social action of an aggregate people, the united body, the undersigned solemnly believe that the "western Cherokees" are, at this day, in law and equity, entitled to reasonable pecuniary indemnity for their loss of soil and right of territory, occasioned by the vast accession of the Cherokee people who last crossed the Mississippi from the east, and who, as a nation, overwhelmed their government. This view is deemed the more just, as it is apparent that the government was instrumental in bringing about the second act of union in 1840—a measure which humanity and sound policy alike justify; and the existing union ought not, therefore, to be regarded as a perpetual *bar* to just remuneration from the national treasury.

Viewing this subject more closely in all its bearings, it is apparent that the "eastern Cherokees" *may* also have a contingent interest in any *indemnity* money which the United States may award the western Cherokees for the deprivation of a portion of their territory. For, in whatever proportion the "*western* Cherokees" shall realize pecuniary benefits from the avails of lands *east* of the Mississippi—that is, a division between all the people (the "*per capita*") of the "balance" of moneys, ("whatever the same may be,") under the treaty of 1835, *and* the stipulations of the act of union of 1840—then, in that case, and in the same proportion, would the *eastern* Cherokees be entitled to participation in the indemnity fund which may be awarded to the *western* Cherokees, but not otherwise.

THE "TREATY PARTY"

Complain of the non-receipt of the "per capita," &c.

The commissioners agree with the complainants, that a large balance of money is due from the United States, under treaty stipulations, for *per capita* division among the Cherokee people.

The treaty of 1835 guaranties the payment of $5,000,000 by the United States for the Cherokee lands, subject to the deduction of moneys to be expended on certain objects enumerated in the 15th article, among which are removal and subsistence.

Had legislation on the subject terminated here, the United States were bound so to administer the fund that the price of the land should not be exhausted by the expenses of removal.

The sums of twenty dollars, the commutation allowed in the 8th article for transportation, and of thirty-three and a third dollars for subsistence, would seem to have been the limits beyond which no further charge for these objects could properly be made upon the five millions. But the government, in the exercise of a benevolent magnanimity, consulting not so much pecuniary considerations as the feelings and comfort of the unfortunate people, gave the removal of the mass of them into the hands of agents chosen from among themselves, instead of offering the contract for their transportation, like that of so many cattle, to the lowest bidder.

Surely, if these expenses proved greater than anticipated by the treaty, it is not just to make, from the fund voted as the price of the Cherokee lands, deductions far exceeding what were contemplated when that price was fixed. Still less is it just that that portion of the Cherokee people, the "treaty party, so called," who had commuted for their removal, should have their reasonable expectations of compensation for the homes they had surrendered defeated, by the exhaustion of their *consideration money* in the removal of the other portion.

Under the first treaty arrangement, then, the United States would seem to owe the Cherokees all the excess that has been paid for removal and subsistence out of the five millions, over the amount that would result from allowing, for each individual removed, the respective sums of *twenty* and *thirty-three and a third* dollars, stipulated in the treaty as commutation.

But there are yet to be considered certain supplementary articles to the treaty, and the subsequent legislation.

The second supplementary article, concluded March 1, 1836, is to this effect: that whereas it was supposed by the Cherokee people that the Senate, in fixing the sum of five millions as the value of the Cherokee lands, did not intend to include the amount which might be required for removal, the subject was to be referred to the Senate, that, if it did not intend the five millions to include the objects specified, such further provision might be made as might appear to be just.

The third supplementary article says: "It is therefore agreed that the sum of $600,000 shall be, and the same is hereby, allowed to the Cherokee people, to *include* the expense of their removal;" and in the sequel concludes: "but it is expressly understood, that the subject of this article is merely referred hereby to the consideration of the Senate; and if they shall *approve* the same, then this supplement shall remain part of the treaty."

The Senate did approve and ratify these articles, and Congress made the "further provision" called for. The conclusion seems just, that the government thereby ratified the above expressed understanding of their intentions, and debarred themselves from making any charge upon the five millions for the expenses of removal.

If this construction be correct, then are the United States bound to restore to the compensation fund, out of the whole sum paid for removal, such portion as has been charged upon the general fund; and also to restore such moneys as may have been paid out of that fund for "objects of a contingent nature," not enumerated in the treaty.

Of course, what has been said in considering the complaints of the "treaty party" applies to the whole body of the emigrants.

The commissioners are of opinion that the non-receipt of this *per capita* is the germ of discontent, the great hinderance to the harmony and quiet of the complaining parties, and of the whole people.

THE UNITED PEOPLE OF THE CHEROKEE NATION.

As a final and certain means of restoring the harmony and promoting the improvement of the Cherokee people, the commissioners beg leave strongly and respectfully to recommend that their authorities be heard in support of their claims on the United States, and that a new treaty be concluded, on the just and liberal basis set forth and promised in the letter of his excellency President Tyler, September 20, 1841. By such a measure, it is believed, not only will the good faith of the United States be triumphantly shown, but they will be more than repaid for this liberal policy in the beneficial results to the Cherokee nation, and its rapid progress to the position of an enlightened and well-ordered community.

So great and desirable a result could not fail to have a commanding influence and moral effect upon the numerous adjacent tribes, far beyond any measure which the commissioners can recommend. And this policy would be in perfect keeping with the early designs of the general government, in its beneficent efforts to advance the red people from a savage to an enlightened race—from wandering hordes to agricultural and civilized communities.

Upon the result of the experiment of the Cherokee people, in their praiseworthy efforts to live under a free and representative government of their own, and to become tillers of the soil, as recommended by all the sages of the republic, depends the success of the great system of Indian amelioration so ardently wished for by every philanthropist.

Respectfully submitted.

ROGER JONES, *Adj. Gen. U. S. A.*,
RICHARD B. MASON, *Lt. Col. 1st Drag.*,
PIERCE M. BUTLER, *U. S. Agent*,
} *United States Commissioners.*

NOTE.—See "*minutes*" of the investigation, as a part of this report; see, also, the "*journal*" of the proceedings of the board.

The evidence taken by this commission, and upon which the report is founded, is not now published, as it is deemed unnecessary, but it may be seen in Senate document 140, of the 28th Congress, 2d session.

ADDRESS.

To the President of the United States:

The undersigned, delegates from the Cherokee nation, in discharge of the duty assigned to them, beg leave most respectfully, sir, to address to you this memorial, on the part of their much injured and suffering people. They earnestly invoke your attention to this, their prayer, and confidently rely upon the magnanimous and liberal spirit of the government, and the kind feeling of the American people toward the red man, to redress their present grievances, and to secure their future safety and tranquillity.

Since the year 1785, when, by the treaty of Hopewell, the Cherokees promised to bury the hatchet forever, they have never made war upon the white man; no—to the contrary. More than once they have stood by their brothers, when battling with fierce and faithless tribes, and have poured out blood freely, and without stint, in the cause of the white man. For this, they take to themselves no credit, as they considered it a duty; but, at least, it is an evidence of sincerity in their professions of fidelity to their white brethren.

By the treaty of Hopewell, the boundaries of the Cherokee nation were defined. By the treaty of Holston, in 1791, a cession of lands was made, and the 7th article thereof is in these words: "The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded." In 1794, another treaty was made at Philadelphia, confirming that of 1791, particularly as to boundaries. Another treaty, made in 1798 and '99, provides for a further cession of lands, and repeats the guarantee of the "remainder of their country forever, as made and contained in former treaties." Other treaties followed, providing for further cessions of land; and finally, in 1838, under the "treaty of 1835," our people were expelled their country at the point of the bayonet. In this forced movement of the nation, torn up by the roots, driven from their humble homes, and confined in camps open to the weather, many sickened and perished; and, on the long journey to the distant country allotted to them, many more of the aged and infirm, and of our women and children, sunk from exposure and exhaustion. Such, sir, unhappily, is too true a picture. But, in the midst of their distress and despair, the Cherokee warriors listened to the counsel of their chiefs, and made no attempt at resistance. To the white man, this forced emigration was bloodless. To the poor Indian, it was fraught with distresses and losses, which will long remain in the memory of the tribe. Is it, then, asking too much to save us from a recurrence of like scenes? Indeed! indeed! we hope not.

In the preamble to the treaty of 1828, it is said that, in the far west, the Cherokees shall have *a permanent home*, and which shall, under the most solemn guarantee of the United States, be and remain theirs forever; a home that shall never, in all future time, be embarrassed by having extended around it the lines, or placed over it the jurisdiction, of a Territory or State; nor be pressed upon by the extension, in any way, of any of the limits of any existing Territory or State. The first article of this treaty defines the western boundary of Arkansas.

The second article runs thus: "The United States agree to possess the Cherokees, and to guaranty it to them forever, (and that guarantee is hereby solemnly pledged,) of seven millions of acres of land, to be bounded as follows," &c. "In addition to the seven millions of acres, thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west," &c., &c. Now, sir, to relieve us from the apprehension which we cannot but feel, that similar dreadful scenes to those described above may occur again, and our people be again driven forth into the wilderness, we intreat that these guarantees and pledges of the government, so often repeated, be carried into effect by giving to our nation a *patent* for their lands west—a full title to *a permanent home*, as promised, where we shall not again be disturbed. Cannot this boon, or rather this mere act of justice, be granted to the remnant of the once numerous aboriginal people of this continent, whose lands extended from the Atlantic ocean to the river Mississippi, and which wide domain forms now the richest and most essential part of your great republic, supporting in affluence millions of your people? Surely, in exchange for such an empire, you will not disappoint the hopes of our people by refusing the only title to the comparatively little territory where it has been your pleasure to place them, in which they can feel secure. More than half a century ago, General Washington, that just, and good, and great man, made a talk to our fathers, and signed it with his great name. At the conclusion, he says: "I shall subscribe my name to this talk, which shall be written in your book, in order to be preserved among you as a witness to our transactions together, and to which you may have recourse in future. This book you will sacredly preserve." We have preserved it sacredly, and now, in our great need, we have recourse to it. At the beginning of his talk, General Washington says: "I am highly satisfied with the confidence you repose in me, and in the United States, as your friends and protectors. We shall, indeed, rejoice in being the instruments of the *Great Master of breath*, to impart to you and your whole nation all the happiness of which your situation will admit; to teach you to cultivate the earth, and to raise your own bread as we do ours; to raise cattle; to teach your children such arts as shall be useful to them; and to lead you, by degrees, from one information to another, in order not only to better your situation on this earth, but, by enabling your minds to form a more perfect judgment of the great works of nature, to lead you to a more exalted view of the Great Father of the universe. Rest, therefore, on the United States, as your great security against all injury." These words of kindness sunk deep into the hearts of our fathers, and the result is, that our nation from paganism has been converted to the blessed faith of Christianity—from savage hunters, depending upon the chase for a precarious subsistence, to a civilized agricultural community. We have an alphabet of our own; and our written republican constitution and the simple laws suited to our condition are printed in our own language, as are the Holy Scriptures, many useful books, and a newspaper. We have eighteen public schools, and some private institutions of like character. Our people are generally moral, industrious, and well informed as to the public affairs of their country, and upon general subjects. We are, then, a civilized and Christian people; and we appeal to the sense of justice of the government and people of the United States to make us safe in the country we now occupy. Our position towards the United States is now changed; we are outside of any State or Territory; the policy of the government, as to the removal of the Indians, has been carried out; no State can now complain of intrusion on our part. We ask a new treaty which shall define distinctly our new position, direct the issue of *a patent in fee simple* for our territory, establish on a permanent footing our relations to the United States, and provide for the payment of our just claims. We ask, sir, the fulfilment of the terms held out to us by General Jackson and by Mr. Tyler. The first, then President of the United States, in an address to our people east of the Mississippi, dated Washington, 16th March, 1835, urging us to go to the west, says: "The United States have assigned to you a fertile and extensive country, with a very fine climate adapted to your habits, and with all the other natural advantages which you ought to desire or expect. I shall, in a short time, appoint commissioners for the purpose of meeting the whole body of your people in council. They will explain to you more fully my views, and the nature of the stipulations which are offered to you. These stipulations provide—1st. For an addition to the country assigned to you west of the Mississippi, and for the conveyance of *the whole of it by patent in fee simple;* and also for the necessary political rights, and for preventing white persons from trespassing upon you." The other stipulations, eight in number, provide for our removal at the expense of the United States, payment for lands, and all just claims, &c. We thus briefly advert to this promise of President Jackson. We quote now the words of President Tyler, in his letter to our delegation of September, 1841, in which he offers us indemnity for the past and security for the future. Mr. Tyler says: "I still propose, at a future day, to negotiate with you a new treaty. You may assure your people, that, so far as I shall have any power or influence to effect such results, not justice merely shall be done them, but that a liberal and generous course of policy shall be adopted towards them. Upon the ratification of the treaty contemplated, which shall give to the Cherokee nation full indemnity for all wrongs which they may have suffered, establish upon a permanent basis the political relations between them and the people of the United States, guaranty their lands in absolute fee simple, and prescribe specific rules in reference to subjects of the most interesting character to them and their remotest posterity, a new sun will have dawned upon them," &c. The execution of these offers of President Jackson and of President Tyler, which we think we have fairly earned by our progress in civilization, under the paternal advice of the great Washington, and by our forbearance, fidelity, and suffering, is all we ask, and we conceive it to be but simple justice.

The eastern and western Cherokees, by solemn, mutual agreement, have united and formed themselves into one body politic, under the style and title of the Cherokee Nation. The undersigned claim to be, and are in fact, the true and only representatives and authorities of the united people of the Cherokee nation, now present at the seat of government of the United States, as shown by our credentials. For confirmation of the fact that our people are united under a fixed and satisfactory government, and for an utter denial that there is any foundation for the complaints which have reached the ear of the government, of cruelties and oppression practised by our authorities upon the "old settlers and treaty party," we are perfectly willing to rest upon the report of the commissioners of the United States sent out less than a year ago to inquire on the spot, and report as to the real state of things in the Cherokee country. These are gentlemen of high character, and cannot be mistaken, or have been deceived in their conclusions upon the subject referred to them, and especially as two of them, Colonel Mason and Mr. Butler, had long resided in the country, and were familiar with the course of events there. We beg leave, in conclusion, to make a few short extracts from that report, which we ask to be taken as part of this memorial. The commissioners say—

As to the act of union: "Under instructions from the War Department, General Arbuckle called a meeting in April, 1840, for the purpose of forming a complete union of the Cherokee people, which broke up without any definite action. A second effort was made that resulted in bringing the parties together at Fort Gibson, in June, 1840, and the signing, by the deputations or committees of each, of the second act of union, the 26th of that month.

"With regard to that meeting and its proceedings, it appears—

"1st. That a committee of the 'western Cherokees' duly attended, deliberated, and consulted together, for many days.

"2d. That they were regarded by General Arbuckle, and the deputation from the government of the 'eastern Cherokees,' which met them, as duly authorized representatives of their people; their authority to act as such not being questioned at the time.

"3d. That their chief, or headman, Captain John Rogers, though personally not well inclined to the union, lent the sanction of his presence all the time; that he nominated Andrew Vann, one of the headmen of his side, to be second chief of the nation, under the terms of the compact before it was signed; and afterwards, the same day, gave the toast, 'what has been done this day—may it never be undone,' (in taking wine with Richard Taylor, one of the committee of 'eastern Cherokees.')

"4th. That the stipulations with regard to office were at once fully and satisfactorily carried out, and that many of those who now deny its validity, and several who signed it, took office, and the required oath, under the act, among whom are the son and brother of the ex-chief, (Captain

Rogers,) at the time, and now, considered two of the headmen of the western Cherokees.

"5th. That Captain Rogers and many others have received from the national treasury of the new government, thus consolidated, moneys for old claims, or services rendered under the old government; some more than ten years prior to the union.

"6th. That the proceedings at Fort Gibson were never referred back to the people of the 'western Cherokees' for confirmation, nor does there seem to have been any intention of such reference. What was said in this connexion appears to have been in reference to the 'constitution,' which was furnished by the 'eastern Cherokees,' and subscribed to at the same time by the committee of 'western Cherokees;' and

"7th. That the now complaining parties acquiesced quietly in the new government, which went into and long continued in operation, peaceably and uninterruptedly.

"Of the committee of twelve, who signed the act of union of 1840, as deputies of the 'western Cherokees,' but now deny authority (except one) for so doing, seven of the number were chosen by the same party, the 6th of December, at Tahluntusky, with others, to represent their complaints before this commission! If the deputies, by whose instrumentality their government was merged, and the independence of their people, as a separate community, lost forever, acted, in 1840, 'without authority,' or even exceeded the measures of delegated powers in a matter so weighty, can it be believed that seven of the number would be deputed now to represent them in any capacity? Such abiding confidence in agents, unauthorized or faithless, is not characteristic of the red men, and widely departs from custom, as the dark and gloomy deeds recorded in their history mournfully attest.

"The commissioners believe that the authority for the proceedings on either side, at Fort Gibson, in June, 1840, was adequate; that the benefits in which the western Cherokees were to participate, in the way of 'per capita,' &c., were calculated upon; and that the expectancy of such pecuniary gain induced many, and reconciled others, to unite as one nation under one government; while all, for the most part, were more anxious to see harmony restored among the Cherokee people than averse to the union—the measure generally believed at the time best calculated to insure it. And the commissioners are of opinion that the 'act of union' was acquiesced in, and virtually confirmed, by the Cherokee people. * * *

"The first general election was in August, 1841, when the voice of the aggregate people alone could be heard in deciding who should or should not then fill the various offices. But so completely do party lines seem to have been obliterated at that time, that the majority of both legislative bodies, and of the officers generally, were from among those formerly known as '*western Cherokees.*' * * * * *

"Inquire 'whether any and what specific acts of violence or oppression, or deprivation of the possession of property, have been exercised upon the chiefs, or common Indians, of the 'old settlers' or 'treaty party' since the arrival of the Ross party in the Cherokee country west, in 1838.'—(Letter of instructions.)

"1st. Many specific complaints have been entered of the deprivation of liberty, by arrests alleged to have been made without just cause. Some of the arrests, it appears, were made on the requisition of the United States authorities, and others, in general, for sufficient cause; some on suspicion, in times of great excitement and alarm, when vigorous measures were deemed requisite for the maintenance of peace and good order. But it does not appear that the arrests have been numerous, or wantonly made, though it is likely that the surveillance exercised by some of the police companies may, in some instances, have been carried too far. The arrests complained of occurred in the autumn of 1843, none having been made since.

"2d. 'Deprivation of the possession of property.'

"Most of the complaints under this head refer to the national reservation of the salines, always held to be public property, and so declared by the old settlers in their laws as far back as 1829, and again in 1833, when they were re-enacted and amplified, but which fact they did not reveal to the commission. The existing Cherokee government, in 1841 and 1843, only confirmed and amended what their predecessors had established, as the sensible laws on the subject show. The authorities evince a commendable spirit of just regard for the rights of individuals, by appointing intelligent agents to value the improvements and outlay, with a view to reimburse those dispossessed.

"3d. 'Cannot enjoy their lives in safety.'

"The complainants have not shown in any case that life has been taken or endangered by the Cherokee authorities since the 'act of union,' except in the administration of wholesome laws. It cannot be denied that human life in the Cherokee country is in danger—great danger. But the danger lies in the frequent and stealthy incursions of a desperate gang of banditti—'half-breeds'—notorious in the nation as wanton murderers, house-burners, and horse-stealers, but whose fraternity is not of the dominant party; nor are the dangers from these outlaws most dreaded by the parties who send up their complaints of the insecurity of life.

"All the complaints admit that the forms of the law were duly observed; but in what community, even the most enlightened, do parties defeated or convicted, including sympathizing friends, feel satisfied with the judgment of the court or verdict of a jury?

"The ample share in the offices of the nation by the western Cherokees, especially in the judiciary, (for the bench has been filled chiefly from among them,) ought to lull suspicion of partial administration of the laws, and at least encourage them in the reasonable hope of equal security in life, liberty, and property.

"In view of all these ascertained facts, the allegation that 'they cannot live in peace in the same country with their alleged oppressors' is of little weight, and ought not, in the opinion of the commissioners, to be entertained.

"The commissioners have discovered that even while on the spot, where they are able in most cases to elicit the truth, complaints have come up, either frivolous in the extreme, or not true; and it is believed that the 'old settlers' and 'treaty party' enjoy, under the 'act of union' and the constitution of the Cherokee nation, liberty, property, and life, in as much security as the rest of the Cherokees.

"The united people of the Cherokee nation. As a final and certain means of restoring the harmony and promoting the improvement of the Cherokee people, the commissioners beg leave strongly and respectfully to recommend that their authorities be heard in support of their claims on the United States, and that a new treaty be concluded on the just and liberal basis set forth and promised in the letter of his excellency President Tyler, September 20, 1841. By such a measure, it is believed, not only will the good faith of the United States be triumphantly shown, but they will be more than repaid for this liberal policy in the beneficial results to the Cherokee nation, and its rapid progress to the position of an enlightened and well-ordered community.

"So great and desirable a result could not fail to have a commanding influence and moral effect upon the numerous adjacent tribes, far beyond any measure which the commissioners can recommend. And this policy would be in perfect keeping with the early designs of the general government, in its beneficial efforts to advance the red people from a savage to an enlightened race—from wandering hordes to agricultural and civilized communities.

"Upon the result of the experiment of the Cherokee people in their praiseworthy efforts to live under a free and representative government of their own, and to become tillers of the soil, as recommended by all the sages of the republic, depends the success of the great system of Indian amelioration so ardently wished for by every philanthropist."

Such is the conclusion of the report of the commissioners, and your memorialists earnestly pray that the suggestion therein made be adopted and carried into effect.

WASHINGTON CITY, *November* 8, 1845.

JOHN ROSS,
DAVID VANN,
J. VANN,
JOHN LOONEY,
RICHARD FIELDS,
R. TAYLOR,
TH. WALKER.

MARCH 25, 1846.

HONORED SIR: In obedience to duty, the undersigned delegation of the Cherokee nation would most respectfully submit for your favorable consideration a memorial and protest, with the accompanying documents, from the Cherokee authorities and people, signed by *sixteen hundred and seventy-six* male adults, without distinction of parties, relative to the affairs of their nation.

The papers embraced in these documents consist of two reports, one being made by Messrs. George Hicks, Stephen Foreman, John Thorn, and William S. Coodey, under instructions from the acting chief, and the other by a select committee of the national council; also, of two letters from Brigadier General M. Arbuckle to Major George Lowry, the acting chief, and of his reply to the same; and a letter from the acting chief to Colonel James McKisick, United States agent. They are marked thus: A, B, C, D, E, F.

The sentiments expressed by the Cherokee authorities and people on the various subjects of which these papers treat, in connexion with the memorial which we had the honor of addressing to your excellency on the 8th day of November, 1845, fully show the great object which our nation have so ardently desired to attain is that of a speedy and amicable settlement of their affairs with your government, by which their present grievances may be redressed, and their future safety and tranquillity secured.

In the consummation of this important subject, through the justice and magnanimity of your auspicious administration, we should rejoice to be the bearer of the glad tidings to our anxious and distressed people, and to dispel every foreboding cloud from their minds, so that they may be encouraged by every laudable incentive to devote themselves to the improvement of their condition, and to enable them to reap the fruits of their labor in peace, prosperity, and happiness.

We have the honor to be, your excellency's most obedient servants,

JOHN ROSS, *Principal Chief*,
R. TAYLOR,
RICHARD FIELDS,
DAVID VANN,
C. V. McNAIR,
STEPHEN FOREMAN,
T. WALKER,
JOHN THORN,
JOHN LOONEY.

To his Excellency JAMES K. POLK,
President of the United States.

To the President of the United States:

SIR: In years past many of us found it necessary, for the expression of our true wishes and opinions, and in support of our acknowledged rights, to approach your distinguished predecessors in the character of memorialists.

The reasons which thus called us forth were of deep importance to us; when our public and private rights were at stake, and when gloom and fearful forebodings hung like dark clouds over our heads. After the trials and afflictions which pressed so heavily upon us in leaving forever the homes of our forefathers, in travelling over many long and weary miles to our present location, and in once more uniting together and getting into successful operation a constitution and code of laws so well adapted to our wants and conditions, we fondly hoped that our national afflictions were at an end. We hoped that, after the many promises made to us of the right of self-government, and freedom from disturbance in the exercise of that right, it would never be necessary to intrude ourselves upon your notice, and ask your aid to secure it to us unimpaired by attacks from any hands, much less those of persons of our own blood and nation. But in this we have been mistaken. And we now feel compelled to approach you in the form of protest and supplication.

We ask your ear but for a moment. We have but few words to say.

You are doubtless familiar with the history of events among the Cherokees, from the establishment of their government up to the time of the departure of the present delegation of the nation now at Washington.

But since then, and within a few weeks past, other events have occurred among us of a painful and exciting nature, and the origin and character of which have been greatly misrepresented by individuals of our country, who have seized upon them for the purpose of fostering prejudice against us, and working out sinister ends of their own, regardless of the rights, the feelings, and interests of their common country. We allude to the recent distressing and unfortunate murders that have been committed on our soil, and among our people. That you may more fully understand the causes and extent of these recent difficulties, we respectfully beg your patience while we trace rapidly the history of the last two or three years.

By referring to the report dated at Fort Gibson, January 17, 1845, and signed by General Roger Jones, Richard B. Mason, lieutenant colonel 1st dragoons, and P. M. Butler, Cherokee agent, commissioners sent by your predecessor into the Cherokee country to investigate the complaints and difficulties in the Cherokee nation, you will find the following statement:

"The complainants, 'old settlers' and the 'treaty party,' have not shown in any case that life has been taken or endangered by the Cherokee authorities since the act of union, except in the administration of wholesome laws. It cannot be denied, that human life, in the Cherokee country, is in danger—great danger. But the danger lies in the frequent and stealthy incursions of a desperate gang of banditti—half-breeds—notorious in the nation as wanton murderers, house-burners, and horse-stealers, but whose fraternity is not of the dominant party; nor are the dangers from these outlaws most dreaded by the parties who send up their complaints of the insecurity of life. Since the commission has been in the nation, not less than three or four wanton Indian murders have been committed; two within the line of a conterminous State. All the complainants admit the forms of the law were duly observed. The ample share in the offices of the nation by the western Cherokees, especially in the judiciary, (for the bench has been filled chiefly from among them,) ought to lull suspicion of partial administration of the laws, and, at least, encourage them in the reasonable hope of equal security in life, liberty, and property.

"In view of all these ascertained facts, the allegation that they cannot live in peace in the same community with their alleged oppressors is of little weight, and ought not, in the opinion of the commissioners, to be entertained.

"The commissioners have discovered, that while present on the spot, where they are able in most cases to elicit the truth, complaints have come up either frivolous in the extreme or not true; and it is believed that old settlers and treaty party enjoy, under the act of union and the constitution of the Cherokee nation, liberty, property, and life, in as much security as the rest of the Cherokees."

It will be seen from the above that the insecurity of life among the Cherokees arose, not from the people generally, nor from any unkind feelings existing among them, but from the stealthy incursions of a number of banditti. This banditti consisted of Thomas Starr, Ellis Starr, Ellis

Rider, Ellis West, and others, who, as is well known, have committed for three years past a number of the most cold-blooded murders and robberies. To enumerate all the bloody deeds committed by them is not deemed necessary. We need only state, that by their hands have been brutally murdered not less than sixteen persons, including citizens of the United States.

To put an end to these outrages, which so disgraced our country and placed in jeopardy the persons and property of all good citizens, no efforts were spared. Since the perpetration of the first of these unlawful deeds, the private citizens of the nation, as well as the officers, used every exertion, and spent many thousands of dollars to bring them to justice. But these efforts and expenditures, owing to the narrow limits of our jurisdiction, and the many evil-disposed persons who would afford them protection and assistance, all proved unavailing. The people still forbore to resort to harsh measures to free the country of them, wishing at all times, and under all circumstances, however trying and exciting, to give full allegiance and submission to the laws of their country.

Thus these wicked, murderous men evaded every effort to bring them to justice, and became bolder and more dangerous from the increase of their gang, and the stealthy manner in which they always committed their murderous deeds. At length they came within three miles of Tahlequah, the seat of our government, while the council was in session, attempted to shoot Mr. R. J. Meigs, a white man by birth, but a citizen by marriage, robbed his house, and burnt it down with all its contents. At the same time they also murdered, and mangled in the most cruel and shocking manner, two of our brothers, without the least provocation. This last outrage, taken in connexion with so many others, greatly excited our whole people, and so exasperated some of them that they started in pursuit and tracked them to their places of concealment, and shot down James Starr, the father of some of the banditti, who was beyond doubt cognizant not only of their evil deeds, but, we feel convinced, the *master-spirit* of the bloody confederacy; they also shot down and stabbed Ellis or Suel Rider, notoriously known as a murderer, and also, unfortunately, Buck Starr, a son of James Starr, and wounded Washington Starr. These deeds, which we deeply regret, caused considerable excitement among us; and, although aimed only at a few murderers, who have been preying upon us for years, and evaded every effort to arrest them, they have been most grossly misrepresented and seized upon by private citizens, in and out of our nation, for the purpose of furthering schemes of self-aggrandizement.

No effort has been or will be spared to torture them into political movements, to convince your government that our laws are unequal and oppressive, and that we cannot live together as one people. But against such construction we unanimously protest. The whole of these unfortunate disturbances have nothing political about them, being directed entirely against men who have run a long career of crime.

We do, therefore, most respectfully but solemnly protest against any private individuals of our country effecting any measure or measures of a public nature with your government. They have no authority to perform any act that shall be binding upon us. The delegation now at the seat of your government, composed of John Ross and others, including the bearer of this memorial, Stephen Foreman, Judge Thorn, and C. V. McNair, are the only persons authorized to transact and settle our affairs; their acts only will be binding on us.

Above all, we do most earnestly protest against any private Cherokees performing any act that shall impair in any way the integrity of our present country. That you may understand more fully the relations we hold as regards the time of our settlement in this country, those of us who are properly denominated old settlers attach to our names the letter O; those denominated treaty men, the letter T; and those emigrants, the letter E; but in this, our memorial and protest, we are as one man.

At a meeting of citizens of the Cherokee nation, held at Tahlequah this day, in pursuance of a previous call, Colonel W. S. Adair was called to the chair, and appointed Stephen Foreman secretary.

The object of the meeting having been explained, the following preamble and resolutions were read and adopted:

Whereas the unsettled state of our affairs is such as renders us deeply solicitous for the action that may be had thereon by the government of the United States; and whereas the recent disturbances have been greatly misrepresented by designing persons, to the detriment of our good name and the prejudice of our government and authorities; and whereas strenuous efforts are made by certain private individuals of our country to accomplish certain ends that are calculated and designed to subvert our institutions and impair the integrity of the Cherokee nation; and whereas, in view of these facts, it has been determined by the proper authorities of this nation to fill the vacancies existing to the lawful delegation of the nation now in Washington—Therefore,

Be it resolved, That we recognise nothing of a party movement in the unfortunate disturbances that have recently occurred in our country, and earnestly protest against such construction being placed upon them in the adjustment of our difficulties with the United States government.

Resolved, That we protest, as one man, against any private citizens of our country, under whatever name and capacity they may profess to act, doing anything whatever with the United States that may at all impair any rights secured to the Cherokee nation, and that no such act will be binding on us.

Resolved, That our confidence in the honesty, patriotism, and ability to settle all our public business with the United States, of John Ross, John Looney, David Vann, Thigh Walker, Richard Fields, Richard Taylor, Stephen Foreman, Clement V. McNair, and John Thorn, delegates of the Cherokee nation, remains full and unshaken.

Resolved, That, as the expression of our opinions and wishes, the following memorial, to which we affixed our respective names, be forwarded to the delegation, to be laid before the President of the United States.

Resolved, That we recommend to the friends and citizens of the Cherokee nation to hold meetings in their respective districts, and unite with us in signing this memorial.

[Signed by 1,676 male adults, of all parties.]

TAHLEQUAH, *February* 4, 1846.

CHEROKEE NATION WEST,
Cherokee Agency, *February* 17, 1846.

SIR: I deem it proper to inform your excellency that I have this day received a communication from Major George Lowry, acting chief of the Cherokee nation of Indians west, informing me—

"That in consequence of some vacancies that have occurred in the delegation of the Cherokee nation, and of the important attitude that the Cherokee affairs have assumed, it has been deemed advisable by the national council, in special session convened, to appoint three delegates to repair to Washington to fill the vacancies existing in, and to co operate with that delegation in bringing to a final close all our (their) unadjusted business."

The gentlemen thus appointed as delegates are Judge Stephen Foreman, Clement V. McNair, esq., and Judge John Thorn. These are gentlemen of acknowledged reputation, possessing talents and qualifications suitable to the fulfilment of the important mission to which they have been selected by their fellow-citizens.

In view of the important trust confided to them and their colleagues now at Washington, any aid your excellency may be pleased to afford in adjusting and reconciling the great interest of the Cherokee people will be duly appreciated and gratefully acknowledged.

I have the honor to be, with the highest consideration, your obedient servant,

JAMES McKISICK,
U. S. Agent for the Cherokee nation of Indians west.

To his Excellency JAMES K. POLK,
President of the United States, Washington City.

WASHINGTON CITY, *April* 11, 1846.

To his Excellency the President of the United States:

HONORED SIR: We beg leave earnestly to invite your attention to this letter, which we are constrained to address to you by an imperative sense of duty to the suffering thousands we represent before the government of the United States.

We are the representatives of the Cherokee nation.

The object of our mission, as stated in general terms in the memorial we had the honor to present to you in November last, is to effect an amicable, and satisfactory, and final adjustment of the affairs of our people with the government of the United States; by which their grievances shall be redressed, and their future safety and tranquillity shall be insured.

Since we left home, unhappy events have occurred in our country—events we most sincerely deplore. For the true character of these events, and for the sense of the Cherokee nation as to the false coloring attempted to be fastened upon them by interested and malicious individuals, red and white, we cannot do better than to ask your attention to the memorial, direct from the Cherokee people, which we had the honor to present to you a few days ago.

And now, sir, in pursuance of the solemn duties imposed upon us, and in the name of the Cherokee nation, we declare that we are the only authorized representatives of that nation now in Washington; and we protest, in the most solemn manner, against the interference of any other person or persons, of whatsoever color, character, or name, in which they may appear or assume, to speak in regard to the rights, and interests, and affairs of the Cherokee nation. Again, we complain of, and protest against, the course pursued by General Arbuckle relative to the unfortunate disturbances among our people, as exhibited by the reports and accompanying documents we have laid before you; as this course has had the effect to paralyze the arm of our government in its efforts to keep the peace among our people and to punish the guilty, and has encouraged a discontented and reckless portion of our citizens to leave their homes and cross the line into the State of Arkansas, where they have formed an encampment, and are furnished subsistence by order of the general; the rations, and not the military protection, (for which they know there is no necessity,) being the real inducement to these men to remain where they are. And, again, that he has permitted Stand Watie to embody and keep together a lawless band of armed men at Old Fort Wayne, in the Cherokee country, in opposition to our government and laws, thereby endangering the peace and safety of our people; the encampment thus formed beyond the line, and the embodiment of this armed band, affording to the outlawed banditti, who are the source of all mischief, places of refuge and safety, to which, after stealthily creeping forth to commit deeds of blood and plunder, they fly back for protection.

To put an end to these disturbances, we respectfully request that orders be given to disperse the armed band above described—to discontinue the issue of rations to them and the so called "refugees" in the State; and that they be advised to return in peace into their own country, and there to demean themselves as good and orderly citizens; and, also, that proper steps be taken to co-operate with the Cherokee authorities for the apprehension of the murderous banditti who have done so much mischief, and have so long eluded the efforts of the Cherokee government to bring them to justice, by seeking refuge in the State of Arkansas. And we ask, sir, as due to our position and official character here, that we be permitted to have access to such papers as have been or may be submitted to your government by any persons whomsoever, touching our national rights and interests, so that we may be prepared to meet and answer the same, if necessary. Finally, sir, in the words of the memorial direct from our people, which we had the honor to present to you a few days ago, "We do most solemnly protest against any private Cherokee's performing any act that shall impair in any way the integrity of our present country,"—convinced, as we are, that a division of the country would heap deplorable calamities on our people, and end in the utter ruin and destruction of the nation.

We exceedingly regret the protracted delay in the coming of Major Armstrong, the acting superintendent of Indian affairs, whose presence here, you informed us, had been ordered for the purpose of enabling you, through his assistance and general knowledge of our affairs, to possess that information which is so important to a correct understanding of the true merits of our national rights, and demands upon the liberality and justice of your government, previous to any decision, on your part, being made on the subject. Impelled by a sense of duty to our most anxious people, and for the well-being of our whole nation, we would respectfully beg leave to suggest, that if there be no certainty of Major Armstrong being now on his way hither, he may be instructed to come on without further delay.

We are, sir, with profound respect, your obedient servants,

JNO. ROSS, *Principal Chief.*
DAVID VANN,
C. V. McNAIR,
R. TAYLOR,
RICHARD FIELDS,
JOHN THORN,
STEPHEN FOREMAN,
JOHN LOONEY,
THIGH WALKER.

The President, upon receiving this communication, handed it back to Messrs. D. Vann and S. Foreman, saying that he had not read it, but, as he had just sent in his message to Congress on Cherokee affairs, he would suggest that the delegation should send it, themselves, to the Committee on Indian Affairs or to Congress.

Correspondence between the Cherokee delegation and the Hon. William Wilkins, Secretary of War.

War Department, *July* 8, 1844.

Gentlemen: Under the impression that the conversations which have occurred between us in our personal interviews, since your arrival in Washington, may not have been as explicit and as fully satisfactory as you may desire, I shall now proceed and communicate upon paper to you the views I entertain upon the questions to which you have called my attention.

The President of the United States, anxious, as every philanthropic man must be, for the improvement and civilization of the various tribes of American Indians, desirous to see them abandon the habits and pursuits of the forest hunter and to adopt a form of government introductory of a system of education, the precepts of the Christian religion, and a code of laws the uniform and just administration of which would give security to person, property, and life, has watched with deep interest and much gratification the advancement and improvement in the condition of the Cherokee nation, of which you are among the principal and leading men. He reposes great trust in those of your community who are so happy as to be the more advanced and enlightened, and to enjoy the confidence of a majority of your people, for the just and impartial conduct of your public affairs, that the oppression of the minority and severe and sanguinary punishments will never distinguish the administration of the criminal branch of your laws.

The President of the United States feels much solicitude that the general government may never be called upon to interpose its authority under the 6th article of the treaty of 1835-'6, which enjoins upon the United States the obligation "to protect the Cherokee nation from domestic strife."

My attention has been frequently called to this 6th article of the last Cherokee treaty, and demands made upon me for the exercise of the power given by it to the government of the United States. These demands are founded upon complaints earnestly and repeatedly made to this department, as well as seriously pressed upon the consideration of Congress. In my personal conversations with you, I have referred to them with as much delicacy and forbearance as I am capable of exercising. They are all set forth in printed publications, and no doubt have frequently attracted your serious attention. You are well aware they arise out of alleged acts of oppression upon two classes of your nation—the "treaty party" and the "Arkansas or western Cherokees;" of the infringement of their personal rights; the expulsion of a portion of them from the limits of your territory; the taking unjust and forcible possession of private property; the partial and inequitable use and distribution of the funds and annuities of the nation received from the government of the United States; and of acts by that class of your people designated as the "Cherokees east" of a still more aggravated and gloomy character. Of the justness of these complaints, whether well or ill-founded, I do not now undertake to decide; but it is represented that they are attended by hostility and bitterness of spirit between the different bands of your nation to such an extent as to leave no hope of reconciliation and peace, and to call for the interposition of this government to prevent "domestic strife" and to preserve tranquillity upon our western frontier.

With a view, therefore, that the government of the United States may avoid any action founded upon contradictory and conflicting representations, and that they may obtain from an official report the necessary and impartial information, I shall submit to the President, and ask his instruction to send into your nation and among your people a commission of officers to inquire into and ascertain the true and exact extent of the discontent and spirit of hostility which prevails among your people, to enable us to decide how far it may be necessary for this government to interfere, and adopt such measures as may be calculated to keep down "domestic strife," and to give to your people ample opportunity of carrying out the provisions of the form of government you have adopted, and of gaining the great and benevolent objects zealously desired by every friend of humanity—the education and civilization of a tribe of twenty thousand Cherokees.

In regard to this object, it is the desire of the President that those Cherokees of the "Arkansas" and "treaty" parties, now absent, should be permitted to return to their homes west of the Mississippi, and receive protection in the enjoyment of their property. The right of expressing their sentiments, and of peaceably assembling together to discuss public measures, and to complain of, and petition for a redress of grievances, cannot be denied to them. To deny and interrupt the exercise of such privileges, would at once satisfy the public mind that the Indian, in his attempts to throw off his old habits and to improve his condition, only involves himself in an oppression much worse, and more to be deprecated, than his wild and savage life.

In the conversations I have held with you, and when reference has been made to the treaty dated on the 29th day of December, 1835, although you have not expressly given me the opinion, yet enough has been intimated to convey to me the impression that you do not consider that instrument as obligatory upon the Cherokee nation. It is, therefore, proper I should say to you that, in your negotiations with this government, a question cannot be entertained of the validity of that instrument. It has passed through all the necessary constitutional proceedings; has been ratified and promulgated as the law of the country; and its repeal or modification can only be brought about by the adoption of a new treaty. It is under the treaty of 1835 that the Cherokees east were removed to, and put in possession of, the country west of the Mississippi, and over which you have spread your constitution and your laws. The large amount of money (upwards of six millions of dollars) which you have received, has been paid under the stipulations of that treaty; and the sum you now demand, exceeding thirty thousand dollars, is payable by the same authority, and must be charged to your nation upon that account.

I shall now, gentlemen, proceed and give you distinct replies to what you declare, in your last written communication to me, to be "the main points of controversy which you are fully empowered and anxious to settle by treaty." They are—

First. That a fair and just indemnity be made to "your nation for the country east of the Mississippi, from which they were forced to remove."

By a reference to the treaty of the twenty-ninth of December, 1835, a very obvious answer will be found to your proposition. In the opinion of this department, there remains to the Cherokee "nation," since the ratification of that compact, no land east of the Mississippi about which to negotiate. You cannot fail to understand that, by the first article of the said treaty, for a very ample consideration, "the Cherokee nation ceded and conveyed all the land owned, claimed, or possessed by them east of the Mississippi river." Such is the language of this comprehensive transfer, and it is not pretended there has been any unjust withholding of the payment of the consideration money, which constitutes the "fair and just indemnity." It must also be borne in mind, in order properly to understand the extent of the "fair and just indemnity" you have received, that you have been further enriched by the grant and possession of the vast territory you now possess and govern west of the Mississippi river.

Second. You ask indemnity also "for all improvements, ferries, turnpike roads, bridges, &c., belonging to the Cherokee nation, and its individuals."

For all claims of this description the treaty of 1835 makes explicit provisions; and the government of the United States has always manifested its integrity of purpose in the adoption of the necessary measures to carry out and fulfil those provisions. A commission for the investigation and decision of this class of claims was organized in 1836, and continued in session until the month of March, 1839, and upon its decrees a very large amount of money has already been disbursed by the United States. A second commission was raised, and held its sessions in each of the years 1842 and 1843; and now a third commission has been organized by the President, and is at this moment actually taking cognizance of the claims recognised by the treaty that have not been settled. However few in number those remaining claims may be, the session of the present commission will shortly be transferred to the Cherokee country, that ample justice may be done to the individual claimants of your nation.

Third. You make a claim also "for spoliations committed upon other Cherokee property by the troops and citizens of the United States, previous and subsequent to the treaty of 1835."

Indemnity for spoliations *previous* to the treaty of 1835 are provided for by that treaty, and a commission upon that subject is now in session, as I have already stated above.

All spoliations upon *real* estate are embraced by the stipulations of the treaty, wherein provision is made for their indemnity, and any further compact in reference to them is therefore rendered unnecessary. But, if there have been any spoliations upon *personal* property *subsequent* to the treaty of 1835, they very probably occurred in consequence of the neglect or refusal of the Cherokees voluntarily to emigrate within the limited time, agreeably to the stipulations of the treaty, and were unavoidably incident to the removal, which was shaped to the form it assumed by the conduct of the Cherokees themselves, rendering unavoidable a resort to the steps that were finally adopted.

Fourth. You require that "a title, in *absolute fee simple*, to the country west of the Mississippi, be conveyed to the Cherokee nation by the United States."

A patent in conformity with the law of 28th of May, 1830, and the treaty of 1835, was made out and sent to the Indian territory on the 18th of July, 1839, to be delivered to the Cherokee authorities, by whom it is understood its acceptance has hitherto been declined. The instrument expressed in the terms of the treaty still remains with the proper agent of the government, subject to the order of your nation.

Fifth. This proposition is, "that the political relations between the Cherokee nation and the citizens of the United States be so clearly defined as to preclude the possibility of any future difficulty between them from the exercise of jurisdiction."

Any proper and advantageous change or modification of the regulations which govern the intercourse between the United States and the people of your nation, which would conduce to convenience, to the avoidance of all controversy, and tend to the better satisfaction of the weaker party, may well be submitted to the legislative authority of the country. My own consideration of this proposition, however, would lead me to insist upon retaining unimpaired the relations that now exist between the United States and the Cherokee nation. The quality and character of these relations have always been acknowledged. In my opinion, it would be a mistaken and dangerous policy to abandon the sovereignty and control of the one country, and the subordinate condition of the other.

Sixth. You require "that the stocks now invested by the President shall yield a specific sum, to be paid annually."

I do not perceive that there is a necessity for any further arrangement on this subject. The treaty of 1835 has made very full provision respecting the public stocks held by the United States in trust for the Cherokee nation. The investments have been made with all the usual regard to security and pecuniary profit; and heretofore the payments from this source having been regularly made, I cannot presume there has as yet occurred any just cause of complaint, upon which rests the desire for a change in the treaty stipulation.

Your seventh and last proposal is, "that a provision be made for those Cherokees residing in States east of the Mississippi, who may wish to emigrate to the Cherokee country west."

That portion of the treaty of 1835, so frequently referred to, which makes the provision for the emigration of the whole tribe, is supposed to embrace those *now* remaining east, and I believe chiefly to be found in the State of North Carolina. The appropriate bureau of this department, I am informed, has been attentive to this matter; has had an enrolling agent in North Carolina, and proposed to the Indians there to emigrate; but the best information we possess leads to the opinion that but a very small portion of them are desirous to remove to the west—and that portion, by their representations to this department, appear not to be inclined to become subjects of the present Cherokee government.

I have thus, gentlemen, with some minuteness, and with a desire to be distinctly understood, given you my views and my answers to the several points submitted to me. I trust they will be satisfactory, because they proceed from one who wishes you the enjoyment of peace and prosperity.

With respect, gentlemen, your obedient servant,

WM. WILKINS,
Secretary of War.

To JOHN ROSS, Esq., DAVID VANN, Esq., JOHN BENGE, Esq., and E. HICKS, Esq., *Delegates from the Cherokee nation.*

WASHINGTON, *July* 17, 1844.

SIR: We have received the communication which you did us the honor to address to us, bearing date the 8th instant, and hasten to make such remarks, in reply, as we consider due to ourselves and the important interests committed to our charge. We do not understand the points referred to in that communication, and regarded by you as definitively settled; and we deem it the more especially our duty to present our views upon the various subjects which you have discussed, as we cannot suppose that it is your purpose or wish to decide questions of so much importance without a full discussion of them; and now such has actually taken place. This, we would respectfully suggest, is the more proper, as the views now communicated to us by you, are, in our judgment, in violation of the rights of the Cherokees, and a departure from the promises held out to us by the President of the United States, in his letter of 20th September, 1841, a copy of which has already been furnished you.

The President requested of the Cherokee delegation, somewhat specially, that that letter should be communicated to their people, in the hope that they would be satisfied with it. This was accordingly done, and our people have since reposed in entire confidence that the promises therein made would be fully and faithfully executed. The propositions heretofore submitted to you by us, and now as we understand rejected, were drawn up on the authority of that letter, and in strict conformity to its promises. Whatever causes may have produced any change of views upon the subject, we feel ourselves abundantly able to prove that in that letter the President of the United States promised no more than was equally due to the Cherokees as a matter of strict justice, and to the good faith of the United States; and we can with great confidence add, which is absolutely necessary to the continued advances of our people in the career of civilization; to their peace, harmony, and welfare; indeed, to their *very existence.*

The first portion of your communication of the 8th, to which our attention is called, is that which relates to supposed divisions and domestic strife amongst our people, and the calls which you say have been made upon you to interpose under the sixth article of "the treaty of 1835." We beg leave to remark, in the first place, that this clause of the "treaty," although not precisely in the same words, is in strict analogy to a similar provision in the constitution of the United States, which authorizes a similar interposition in any State of the Union, in case of insurrection, &c. We submit that it is *only* on the application of the constituted authorities of the Cherokee nation, that any such interposition can be justified, as it is only in such a case that the federal government can interpose in a like case within the limits of any State. By the fifth article of the "treaty of 1835," the right is secured to the "national council of the Cherokee nation to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people, or such persons as may have connected themselves with them," with a *proviso* that such laws shall not be inconsistent with the laws and constitution of the United States. Language more strong and clear could not, in our judgment, have been employed, to secure the Cherokee nation from any interference in their administration of justice or other internal concerns. It is not pretended that any law, inconsistent with the laws and constitution of the United States, has been passed; nor has any complaint been made from any responsible source of inability on the part of the constituted authorities of the nation to enforce the laws, put down domestic strife, or preserve the peace of the nation. The government of the Cherokee nation, which it is a source of pride and happiness to us to know is now in full and successful operation, securing to all an impartial administration of justice, and the amplest securities for all private rights, would be reduced to worse than a nullity—it would be a ridiculous farce—if the government of the United States can, upon an *ex parte* statement, coming from whatever source, interpose its authority, and actually excite and keep alive "domestic strife," under the authority to suppress it. In all societies, there are persons to be found who will commit violations of law. Events of this kind, and of the most painful character, are not unknown in the United States; and, in a neighboring city, more lives have been sacrificed by lawless violence in one day than has occurred in the Cherokee nation for the last ten years. Yet no one doubts that the power of the State authorities is amply sufficient to correct existing evils; and that any interposition from the government of the United States is not needed.

Feuds and discords among the Creek nation of Indians have been more violent than those which have ever existed among the Cherokees; but no encouragement was ever given by the government to the discontented party, and there is now no tribe of Indians more contented and harmonious than the Creeks. Such not only will be, but we broadly assert is even now the condition of our people. It is with communities as with individuals, that, when they know that their destinies are united forever, many small causes of strife are passed over and reconciled; but, when separation is easy, the happiness of all parties is too often sacrificed to temporary excitement and momentary passion. Nothing was more natural nor more to be anticipated than excitements and divisions between the different portions of the Cherokee people, on their being brought together west of the Mississippi. A very small portion—not more than one fiftieth of the population—had undertaken to cede away the whole country of the Cherokees. The great mass of our people were, in consequence of this "treaty," expelled at the point of the bayonet from their native country—from the country where reposed the bones of their ancestors for countless generations, and where they had pleasant homes, good farms, and all the comforts which their constant advances in civilization had secured to them—and removed under circumstances of varied and complicated sufferings and hardships, disease and death. When they found themselves re-united with those who had entailed all this misery upon them, and who were still striving to prevent the re-union between the eastern and western Cherokees, and the mutual adoption of a more regular and wiser constitution and laws for the government of the whole people, what was more natural, even with a people in the highest degree civilized, than occasional ebullitions of passion and acts of violence? And we can with truth say that, of all the matters connected with our long and arduous and highly responsible administration of the affairs of the Cherokee people, there is no one to which we look back with so much of that highest of earthly consolations, an approving conscience, as the consciousness that it was in a great degree owing to our constant exhortations to our people, deeply excited, injured, and ground down, as they were, to abstain from all acts of violence, that scenes of strife and bloodshed were not of more frequent occurrence than they have been. In this connexion we may remark, that it is to be expected that *some* individuals—a portion, nothing like a majority of the eastern or western Cherokees—should desire to return to the greater freedom or license rather which they enjoyed previous to the introduction of the new state of amenability to law and order. To which may be added the influence of designing and interested men in the nation, on the borders, and in this city, who well know that their purposes of selfish cupidity can be better accomplished if our government be subverted, and certain portions of our people removed from the protection and care of the nation as now constituted. In these suggestions, we trust that you will not only have a clue to the movement that has been made in the name of the western Cherokees; but that you will also see the great danger of lending a too open ear to complaints, and thus exciting the *strife* which we have the most entire confidence that it is your wish to suppress.

As to the return of the Cherokee individuals to whom you allude to their country, we trust that it would be superfluous for us to say that nothing would be more agreeable to us than to see the Cherokees a united, happy, and harmonious people. These men have voluntarily left their country, and whenever they choose can return, enjoy the protection of our common laws, and abide their penalties. Upon this point, not only is the history of the past a pledge for the future, but if considerations of duty and humanity had no influence with us, we must have but very little sagacity not to see that any acts of cruelty or violence on the part of the majority of the Cherokee nation will have a tendency to bring about results which we most deprecate. Admonitions on this subject may well be addressed to others, who, for selfish ends of their own, desire to bring about a division of our people, and will spare no means, however revolting, to create an apparent necessity for that measure. This brings us to another suggestion which you make upon this point—the sending out of a commission to examine and report upon the state of affairs generally in the nation. The particular points to which an inquiry is to be directed are not indicated. We confess that we can see no necessity for such commission. Reports upon the general condition of our affairs have been made by the regular agent for the Cherokee nation, Governor Butler, who we believe enjoys the highest confidence of the government. A similar report, as we are informed, has been made to the department by General Taylor, an officer of great experience and the highest standing. The advantages which these gentlemen possess, from long residence in the country, and a thorough knowledge of the general state of things as well as the people personally and individually, must certainly impart to their opinions a higher authority than will be due to any commissioners who may be sent to our country, with means of accurate information of a character so inferior. We deem it our duty to add, that the fact of sending such a commission will excite hopes and expectations, on the part of the discontented of our people, which can have none but the most injurious consequences. We have deemed it our duty to make these suggestions, which are in no degree prompted by the slightest fears on our part that the report of any such commission can be otherwise than honorable to those entrusted with the administration of affairs of the Cherokee nation. If this commission is to be charged with any inquiries as to the expediency of a separation or division of our people, we most solemnly protest against it, as a violation of our treaties with the United States; of the rights of our people, and as involving their ultimate destruction. This point we forbear now to discuss, as no such purpose has been, as yet, avowed.

Since the forcible removal of our people under its covering, we have not in our intercourse with the government agitated the question of the validity of the "treaty of 1835." Yet at the same time we have submitted to a necessity which we could neither control nor resist, we should have been unjust to ourselves, to the high interests committed to our charge, and false to the truth of the history of the transaction, if we had acknowledged that as a treaty which had the sanction of less than one-fiftieth of our people, and even that small proportion invested with no earthly authority. But we have had no alternative left us but to submit to the necessities of our position, and to appeal to the sense of honorable justice of this great country. Of the success of that appeal we have not and shall not despair.

In reply to your answer to the first of the propositions which we had the honor to submit to you on the 30th of May last, we beg leave to say, that we have not been able to learn, with anything like certainty, what is the equivalent which we are to receive for our lands east of the Mississippi. The treaty of 1835 is so obscurely worded, and the fund agreed upon by the Senate to be given as payment for our "lands and possessions" has been appropriated to so many other different and unauthorized purposes, that we are at a loss to say how much of that fund is strictly national, and how much of it to be appropriated for the benefit or indemnity of individuals. What we desire is, that this, with all other matters of doubt and difficulty, be definitively arranged by a new treaty.

As to the second of our propositions, that relating to indemnity for all improvements, ferries, &c., &c., if you mean by "the government of the United States manifesting its integrity of purpose in the adoption of the necessary measures to carry out and fulfil the provisions of the treaty," that it is intended to pay all individuals having such claims, out of other funds than those given as the indemnity under the treaty for the Cherokee country east of the Mississippi, we are satisfied to await the full investigation and adjudication of those claims. But if it is intended that the payment of these claims is to be made out of the Cherokee fund given them as the consideration for the cession of their country, it resolves itself into a question of the distribution of those funds, and is a matter of no sort of interest to the United States, as it does not increase or diminish the sum which they will have to pay. But we indulge the hope that it is your meaning that these claims shall be paid for by the United States over and above the sum stipulated to be paid by treaty. We regard the action of the Senate on this subject as decisive of the principle. When a doubt was expressed in the treaty whether such claims were included in the five millions of dollars allowed by the Senate, and, if not, that $300,000 were appropriated, the Senate, by sanctioning that appropriation, directly admit that all such claims were to be paid over and above the five millions of dollars. If the $300,000 appropriated for that purpose are insufficient, more must be given, for the principle is the same.

As to our third proposition, spoliations committed upon all other Cherokee property by the troops and citizens of the United States previous and subsequent to the treaty of 1835, it is not considered necessary to reply to so much of your remarks upon this point as are pertinent to, and referred to in our remarks upon the last. As to the sacrifice of the personal effects of the Cherokees by the troops and citizens of the United States—a sacrifice which stript hundreds of their all at that most gloomy epoch of our nation's history—we would gladly obliterate, if we could, from our memory, everything connected with it. It was a scene not often witnessed, and which, we trust in a righteous God, will never be repeated—of a people, a civilized and unoffending people, driven from their country and their homes, for no other reason than that another and more powerful people wished to possess that country. If the government of the United States had taken that country by force, open and direct, under a state of circumstances creating a necessity—valor supposed—a just regard for their own character, for the opinion of the world, would have suggested the most liberal indemnity both to the nation and individuals suffering. We cannot perceive that the moral force of these considerations is diminished by this pretended treaty, to which we do not choose to apply the terms which we deem it merits, which we perhaps could not do without giving offence. We cannot, therefore, believe that the Cherokees, for indulging that patriotism which is inherent in the human heart, and which is universally esteemed honorable, and for clinging to their country with fervid and continual devotion until "the steps that were finally adopted" forced them to remove, have thereby forfeited their just claims to indemnity for "any spoliations upon personal property prior or subsequent to the treaty of 1835."

Many other remarks suggest themselves to us upon the other points of your communication; but as this communication has been extended to so great a length, we forbear any further allusion to those topics, reserving them for future discussion, if necessary.

For the kind expression of your wishes for the enjoyment of peace and happiness by our people, be pleased, sir, to accept our warmest thanks, and the assurance that there is nothing dearer to us, nor more desired by them. After the violent storms through which they have been forced to pass, they earnestly desire repose, that they may locate themselves comfortably, advance in improvement, and, in some degree, retrieve their shattered fortunes. To attain these great blessings, a feeling of permanence and security is indispensable. But, if private individuals of our nation, whatever may be their character, are allowed to beset the government with their complaints--*their* representations, and their startling and unpatriotic propositions--that feeling cannot be indulged by the Cherokee people.

That the termination of our negotiation is "satisfactory," we cannot, in candor, say. After our long and expensive sojournings here, and the bright anticipations which we, in common with our people, have not unjustly indulged, from the character of our case and the promises made to us, we did hope that the time had arrived when the "new sun" would dawn upon the Cherokee nation. But we are mistaken. And although it will be painful again to bear the cup of disappointment to those who have "endured all things and suffered all things"--most especially to the lips of the widowed mothers and helpless orphans who linger among us, melancholy monuments of the want and affliction brought on them, in too many cases, from having been deprived of their all—we can but do so, and, placing implicit reliance upon the justness of our cause, still hope on.

We beg, in conclusion, and in now taking leave of you, to assure you, sir, of the very high respect and esteem with which we subscribe ourselves, your very obedient servants,

JNO. ROSS,
E. HICKS,
JOHN BENGE,
DAVID VANN,
Cherokee Delegation.

WILL. P. ROSS,
Secretary of the Delegation.

To the Hon. WILLIAM WILKINS,
Secretary of War.

Memorial from the citizens of Washington county, Arkansas, to the governor of that State.

EVANSVILLE, ARKANSAS, *March* 4, 1846.

To his Excellency the Governor of the State of Arkansas:

SIR: We, the undersigned, citizens of the State of Arkansas, residing in Evansville and its vicinity, beg leave, respectfully, to present to your consideration the following facts:

In consequence of the disturbances existing in the Cherokee nation, our neighborhood has been the resort of numbers of Cherokees and half-breeds, calling themselves "refugees," and representing that their lives are endangered in the nation, and that they reside among us for protection. We would be the last persons in the world to deny to peaceable and orderly men the protection asked for under the circumstances; but the conduct of many of these refugees has been so notorious as to excite in the minds of the undersigned serious apprehensions for the safety of their own lives, in case they attempt to enforce the salutary laws of the State. Since the outbreaking of the disturbances in the Cherokee nation, there have publicly appeared among *us* many notorious murderers, such as Tom Starr and Ellis West; and these men were harbored and fed by the refugees. No attempt was made by the citizens for their arrest, although one was known to have murdered, in cold blood and in open day in the streets of Evansville, a harmless Cherokee citizen. This apparent apathy on the part of the citizens has been severely commented upon in the papers; and we can only state, that the desire to get rid of these outlaws is universal; that the number and character of the relatives of these villains would, in our opinion, place the lives of those who should attempt to arrest them in great danger.

In addition to the wanton destruction of our stock by these refugees, some of them, on the night of the 22d ult., murdered Elijah Fish, at the very door of a house in Evansville in which they had been passing the evening; and *so great* is the fear entertained of these men, that the persons living in the house were afraid to open their doors, although, at the very threshold, there lay a man in the agonies of death, from a gun-shot wound; added to which were the horrors of burning—the clothes having caught fire from the wadding of the gun. The names of four persons concerned in this foul murder are, Ezekiel Rider, Augustus Rider, William Johnson, and William Baty, against whom warrants have been issued. The civil authorities, aided by the military, have made several attempts to arrest these individuals; but have been foiled by the vigilance and concerted action of the Cherokee refugees at and near Wilsonville, among whom they are secreted and protected.

Of late the same set have commenced their attack upon the soldiery, here for their special protection; have murdered one, beaten another most brutally, and avowed their intention of *killing* others. They use the line between the State and the nation as their shield—slipping across, after night, committing murder, and before day are again on this side at large, mingling with the citizens, and almost boasting of their atrocious deeds. On the night of the 28th ult., a number of these refugees embodied, crossed over into the nation some ten miles, murdered a Cherokee in a most barbarous manner, (shooting him twice, stabbing him eleven times, and scalping him,) and crossed back before morning, and were in safety among us and under our laws.

We repeat, sir, that this band *is too numerous* for the citizens to take proper steps against them. They dare not speak what they think, lest they be burnt out of house and home, and place their lives in great jeopardy.

One of the murderers of Elijah Fish was taken by the dragoons a few days since, committed by the magistrate to jail, and was turned over to a constable and guard to be carried hence to Fayetteville, who were surrounded by a number of these refugees in arms before leaving Evansville, and so much alarmed as to cause them to let the prisoner, Wm. Johnson, escape, almost before their own eyes. This, it appears, was the only security they had for their own lives—letting a murderer escape.

We have no doubt, for it was once the case with us, that, abroad, these refugees have many sympathizing friends. They came across the line as members of the "treaty party," forced from their own homes in consequence of their *politics;* and it is natural with all, who *know them not*, to become prejudiced in their favor, and do what can be done for them. This we did in the first place, but soon found we erred.

In view of these circumstances, the undersigned respectfully inquire whether they cannot be relieved from the presence of a body of desperate men and their associates, who are escaping the vengeance of the laws of the Cherokee nation, and setting our own citizens at defiance.

Statement of Ecoowe.

This day appeared before us, George Hicks, chief justice, and Moses Parris and Thomas Pegg, associate justices, of the supreme court of the Cherokee nation, Ecoowe, who, being duly qualified, deposeth and saith as follows, to wit: About two years after the arrival of the emigrant Cherokees in the country at present occupied by the Cherokee nation of Indians, a conversation was held between John A. Bell and himself, in which Bell stated to him that a plan had been formed for the purpose of stealing horses, robbing, and house-burning, and once in a while to kill persons; and he and his party would be in opposition to John Ross as long as he remained in office; for, if they could break him down, they would succeed in breaking down the nation. Bell said, also, he and the principal men of his party wished to get some young men to go to the house of John Ross, assassinate him, and then fly across the line, beyond the reach of harm. To this Ecoowe replied, "You are depending upon too few friends, as Ross has a great many friends, who would, if he were assassinated, follow those across the line who should do it, and retaliate." He (Bell) also mentioned the principal men whom they wanted to have assassinated, and named, among others, Daniel Colston, who, he said, was a man of much influence and extensively known; and, in reply to the question from him (Bell) whether such was not the character of Colston, he gave as answer that he supposed it must be, as he had often heard so. George Waters acted as his interpreter. After his conversation Bell left the nation, and moved into Arkansas.

George Waters was afterwards killed, because, as the deponent was informed by Barrow, he told about the breaking open of a house in Evansville by James Starr, jr., George Fields, or *Ay-ose-u-oti*, and Barrow, from which they stole some whiskey, and would have killed the owner of the house if he had been in it. The whiskey was taken off in a tub and water-buckets stolen from Benjamin Johnson.

The first thing that caused the present outlaws to secrete themselves, was killing a white man by the name of Campbell, a lawyer, for his money; and from whom they got a great deal of money. This statement was made to me by James Starr, sen., himself, who said that John A. Bell, Thomas Starr, Bean Starr, and David Buffington, were the persons concerned in it; and that David Buffington was afterwards presented with a pistol by John A. Bell, with which to defend himself in case of need. About this time Thomas and Bean Starr began to secrete themselves. David Buffington afterwards commenced to divulge the secret of the murder, which was the sole cause of his death. James Starr, sen., further stated that it was a rule whenever any person of the treaty party committed murder, he was to come to his party; and which the deponent believes was often done. He said, also, that he was trying to make up a company of about thirty men—as many as twenty-five would do—he already had fifteen, and could he have increased the number to thirty, he was ready to make an attack on David Vann. Not long after this time occurred the killing and burning of the Vore family; the names of the persons engaged in the affair, as made known to the deponent, were Thomas Bean and Ellis Starr, George West, Washington Starr, and other younger sons of James Starr, who stated that, at the burning of the store, nothing but the most serviceable articles of clothing and of other things were taken. Ellis Starr after this went off in company with Tom and Bean Starr. In this affair, George West was stabbed downwards between his collar bone and throat, which swelled much, and he died in consequence of it on the white side of the line. Of these proceedings deponent became very tired; but his life was at stake, and this prevented him from making them known. James Starr, sen., further stated that his young men (sons) were then out hunting for people (to kill,) and would be, so long as they should remain (unsubdued,) or until they should subdue their opponents; for the laws are so made that a person cannot be tried and convicted of crime on suspicion, but must have full evidence of guilt. Deponent then asked him if he was not sometimes afraid? He replied not, as they (his sons) had this business to do themselves—meaning that he would not be suspected. Nothing more was then said on this subject; but Starr said he understood he was to be killed, a thing which originated with David Vann, whose life he was more determined than ever to have taken; and, next to his, Samuel Downing's, then Archibald Campbell's, then David Downing's, and then John Spear's. If they were thus dealt with and put down, being the principal leaders of the people, the mass of the people would be easily managed, and their plans executed—the destroying of the Cherokee government.

Starr stated, further, that the killing and burning of some white people (known as the Cave Hill tragedy, in 1839,) was done by his young men, but mentioned no names; nor did he ask any questions or explanations about it, as none of the party had yet secreted themselves. This was the beginning of their wicked acts, and they procured money by it, but the amount he did not mention. For this affair at Cave Hill the whites took up on suspicion some of their own people and hung them, which he said was the very thing he intended for them to do. The plan which it is intended to be put into operation by the leaders of the treaty party at present, is the same that originated with John Ridge. William Holt, in a public speech to the party in council, declared this, (as told to deponent by Barrow *and* Dah-lah-see-nee,) and said they would not deviate from the course they are pursuing, to wit: they would not be deterred from destroying the Cherokee government, but would begin more earnestly in June, by which time the people would begin to see their intentions; that it would not be two years before the Cherokee government will be destroyed. In that time there will be neither counsellors nor government, nor would the Cherokees be permitted to govern themselves, but be under the government of the whites. Further, they said they intended to remove some time the coming fall, about which time they expected valuing agents, who will value all the improvements they leave, and they be paid for them. They tried to persuade deponent to move off with them, but he objected and told them that he could not consent to go till the whole body of the people should remove.

Stand Watie is the principal man of this party; next to him are John A. Bell, Ezekiel Starr, William Holt, Daniel McCoy, and George W. Adair. Captain John Rogers has not, nor will he depart from the course he has been pursuing in connexion with the treaty party.

Caleb Starr was sent by one of the treaty party to meet the exploring party to turn them on the white side of the line.

The assistance the treaty party expected to have was made known in a speech by Mr. Holt, who stated that some time during the summer United States troops would give them protection if necessary; but, if they remained in peace, they would separate in peace. His wife stated that the troops were ordered to be directed by him, and were noticing all the acts done. They intend also to have troops stationed all along the boundary line to prevent any of the people from crossing from the nation into the State, and intend also, when the party leaves this country, to have four leading men assassinated. To this the deponent objected, and told them, should this be done, they would be followed and all destroyed. It is agreed by the party to kill three men in Going Snake district, viz: Jefferson Hair, John Hair, and Ah-doo-hus-kee, accused of having killed James Starr, jr. Daniel McCoy was one of the public speakers at the council, and is one of the principal persons who desire to have a division of the Cherokee country; and, if this cannot be done, a separation of the people is determined upon. It is also agreed that should the light-horse be embodied at any place in any considerable number, they will go round and fall on the people in the rear when not aware of danger. Tom Starr it is said sent word that, when he is tired out, he will fall upon any and all he meets with.

Sworn to and subscribed before us this 2d day of April, A. D. 1846.

E-COO-WE, his × mark.

George Hicks, *Chief Justice, Cherokee Nation.*
Moses Parris, *Assistant Justice, Supreme Court.*
Thomas Pegg, *Assistant Justice, Supreme Court.*